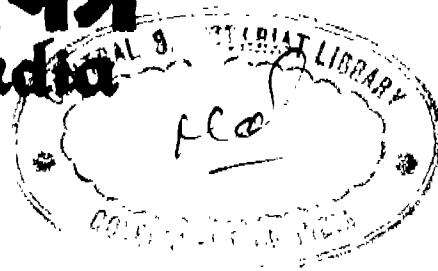




भारत का राजपत्र The Gazette of India

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PART II — Section 2
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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills, were introduced in Lok Sabha on 31-8-2001:—

I

BILL No. 83 OF 2001

A Bill to provide for development and regulation of mineral resources in the territorial waters, continental shelf, exclusive economic zone and other maritime zones of India and to provide for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Offshore Areas Mineral (Development and Regulation) Act, 2001.

Short title
and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals in offshore areas to the extent hereinafter provided.

Declaration as
to expediency
of Union
control.

3. (1) This Act shall apply to all minerals in the offshore areas including any mineral prescribed by notification under clause (g) of sub-section (1) of section 2 of the Atomic Energy Act, 1962 except mineral oils and hydrocarbons related thereto.

Application.

(2) Except as otherwise provided in this Act, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force in the offshore areas.

Definitions.

4. In this Act, unless the context otherwise requires,—

(a) “administering authority” means an authority notified, in the Official Gazette, by the Central Government for the purposes of this Act;

(b) “atomic minerals” means the minerals included in atomic minerals specified in Part B of the First Schedule to the Mines and Minerals (Development and Regulation) Act, 1957;

67 of 1957.

(c) “Coast Guard” means the Coast Guard constituted under the Coast Guard Act, 1978;

30 of 1978.

(d) “exploration licence” means a licence granted under section 12;

(e) “exploration operation” means any operation undertaken for the purpose of exploring, locating or proving the mineral deposits;

(f) “holder”, in relation to any operating right, means the lessee, licensee or permittee, as the case may be, in respect of such operating right;

(g) “hydrocarbon” means very large group of chemical compounds composed of carbon and hydrogen;

(h) “Indian national” means a citizen of India and includes a firm or other association, if all the members of the firm or, as the case may be, the members of the association, are citizens of India;

(i) “lessee” means the person in whose name the production lease is granted;

(j) “licensee” means the person in whose name the exploration licence is granted;

(k) “mine” means any place in the offshore area wherein any exploration or production operation is carried on, together with any vessel, erection, appliance, artificial island or platform and premises in the offshore area used for the purposes of exploration, winning, treating or preparing minerals, obtaining or extracting any mineral or metal by any mode or method, and includes any area covered by an exploration licence or production lease where exploration or production operation has been, or is being, or may be carried on under the provisions of this Act;

(l) “mineral” includes all minerals except mineral oil and hydrocarbon resources related thereto:

(m) “mineral oil” includes natural gas and petroleum;

(n) “offshore area” means the territorial waters, continental shelf, exclusive economic zone and other maritime zones of India under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976;

80 of 1976.

(o) “operating right” means the right of holder of a reconnaissance permit, or an exploration licence, or a production lease;

(p) “permittee” means the person in whose name the reconnaissance permit is granted;

(q) “pollution of offshore environment” means the introduction by any person, directly or indirectly, of substances or energy into the offshore environment which results, or is likely to result, in deleterious effect on living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the offshore areas and impairment of quality of sea water for use and reduction of amenities;

(r) "prescribed" means prescribed by rules made under this Act;

(s) "production operation" means any operation undertaken for the purpose of winning any mineral from the offshore area and includes any operation directly or indirectly necessary therefor or incidental thereto;

(t) "production lease" means a lease granted under section 13 which confers an exclusive right for the purpose of undertaking production operation;

(u) "reconnaissance operation" means any preliminary geo-scientific survey undertaken for the purpose of searching or locating mineral deposits;

(v) "reconnaissance permit" means a permit granted under section 11 for the purpose of undertaking reconnaissance operation;

(w) "vessel" includes any ship, boat, sailing vessel or any other vessel of any description.

CHAPTER II

GENERAL PROVISIONS FOR ACQUISITION OF OPERATING RIGHTS IN THE OFFSHORE AREAS

5. (1) No person shall undertake any reconnaissance operation, exploration operation or production operation in the offshore areas, except under and in accordance with the prescribed terms and conditions of a reconnaissance permit, exploration licence or production lease granted under this Act and the rules made thereunder:

Reconnaissance, exploration or production to be under permit, licence or lease.

Provided that nothing in this sub-section shall apply to any reconnaissance operation or exploration operation undertaken by the Geological Survey of India, Atomic Minerals Directorate of Exploration and Research, the Chief Hydrographer to the Government of India of Naval Hydrographic Office of the Indian Navy, the National Institute of Oceanography, the National Institute of Ocean Technology of Department of Ocean Development of the Government of India, or any other agency duly authorised in this behalf by the Central Government.

(2) A permittee or licensee or lessee shall furnish—

(a) all data, as the case may be, relating to reconnaissance operation or mineral exploration or mining such as bathymetry, geomorphology, mineral distribution, anomaly maps, sections, core logs, location maps, plans, structures, contour maps, chemical analysis, data on current tides, waves, wind, other geophysical and geotechnical data and any other data collected during exploration operation or mining operation, to the Director-General, Geological Survey of India, Kolkata and the Controller General, Indian Bureau of Mines, Nagpur;

(b) all information pertaining to atomic minerals collected, as the case may be, during reconnaissance operation or exploration operation or mining operation, to the Secretary to the Government of India dealing with the Atomic Energy, Director-General, Geological Survey of India, Kolkata and the Controller General, Indian Bureau of Mines, Nagpur;

(c) a six monthly report on the work done by him stating the number of persons engaged and disclosing in full the geological, geophysical, geochemical, geo-environmental or other valuable data collected by him during the period under report, to the Director-General, Geological Survey of India, Kolkata and the Controller General, Indian Bureau of Mines, Nagpur and the report shall be submitted within three months of the closing of the period to which it relates:

Provided that in case of investigations pertaining to the atomic minerals, such report shall also be submitted to the Secretary to the Government of India dealing with the Atomic Energy;

(d) a full report of the work done by him and all information relevant to mineral resources collected by him during the course of exploration operation of the area covered by the licence within three months of the expiry of the licence, or abandonment of operation or termination of the licence, whichever is earlier, to the Director-General, Geological Survey of India, Kolkata and the Controller General, Indian Bureau of Mines, Nagpur and shall also give therein reasons and indicate whether the whole or any part of the report or data submitted by him should be kept confidential.

(3) Notwithstanding anything contained in this Act, the Central Government may, —

(a) authorise seaward artillery practice under the Seaward Artillery Practice Act, 1949;

8 of 1949.

(b) provide for, by notification in the Official Gazette, special measures to ensure public safety and interest, the defence of India and civil defence, conduct of the naval operations and exercises, national security and other strategic considerations and the matters connected therewith during war like conditions or otherwise.

(4) No operating right shall be granted or renewed otherwise than in accordance with the provisions of this Act and the rules made thereunder and any reconnaissance permit, exploration licence or production lease granted, renewed or acquired in contravention of the provisions of this Act or any rules made thereunder, shall be void.

Grant of
operating
rights.

6. The Central Government shall not grant an operating right to any person unless such person,—

(a) is an Indian national, or a company as defined in section 3 of the Companies Act, 1956; and

1 of 1956.

(b) satisfies such conditions as may be prescribed:

Provided that no production lease for atomic minerals or prescribed substances may be granted without consultation with the Department of the Government of India dealing with the atomic energy.

Termination
of operating
right.

7. (1) Where the Central Government, after consultation with the administering authority, is of the opinion that it is expedient in the interest of development and regulation of offshore mineral resources, preservation of natural environment and prevention of pollution, avoidance of danger to public health or communication, ensuring safety of any offshore structure, or conservation of mineral resources, the Central Government may prematurely terminate any operating right in respect of any mineral offshore in any area or part thereof.

(2) No order for premature termination of operating right under sub-section (1) shall be made except after giving the holder of operating right a reasonable opportunity of being heard.

(3) Where the holder of any operating right fails to commence operation within the period specified in section 14 or discontinues the operation for a period of two years, the operating right, shall lapse from the date of execution of the lease or, as the case may be, discontinuance of the operation:

Provided that the administering authority, on an application made by the holder of operating right and after being satisfied that such non-commencement of operation or discontinuation thereof, is due to the reasons beyond the control of the holder of operating right, may condone such non-commencement or discontinuation.

8. (1) The Central Government may, from time to time, by notification in the Official Gazette, reserve any offshore area not already held under any operating right, for the purposes of the Central Government and, where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such area shall be reserved.

Reservation of areas.

(2) The Central Government may, from time to time, by notification in the Official Gazette, dereserve, any area reserved under sub-section (1), in the interest of development and regulation of the offshore mineral.

9. (1) The Central Government may, in the public interest, by order in writing and communicated to the permittee, licensee or lessee, as the case may be, close any area either in part or whole, covered under any operating right, for the preservation of natural environment and prevention of pollution, or to avoid danger to public health, or communication, or to ensure safety of any offshore structure or platform, or for the conservation of mineral offshore, or for national security or for any other strategic consideration.

Power to close areas.

(2) Any area, either in part or whole closed under sub-section (1) and included in any operating right, shall, from the date of such order, be deemed to be excluded for the purposes of the operating right and the holder of the operating right shall not undertake any operation in the area covered under such order from the date specified therein.

10. (1) Within six months from the date of commencement of this Act, and subsequently at such times as may be considered necessary in this behalf by the administering authority, it shall, by notification in the Official Gazette, declare the parts of the offshore areas which shall be available for grant of reconnaissance permit, exploration licence or production lease.

Availability of areas for grant of permit, licence or lease.

(2) Any application for the grant of reconnaissance permit, exploration licence or production lease in respect of any area not covered by a notification issued under sub-section (1) shall be deemed to be premature and no application shall be entertained therefor.

(3) Operating rights shall be granted in standard block of five minutes longitude by five minutes latitude and such grant may cover more than one standard block which shall be contiguous.

11. (1) The administering authority may grant a non-exclusive reconnaissance permit to any person eligible under section 6 for grant of operating right.

Grant of reconnaissance permit.

(2) The period for which a reconnaissance permit may be granted under sub-section (1) shall be for a period specified in such permit which shall not exceed two years.

(3) A reconnaissance permit granted under sub-section (1) may be renewed for a period not exceeding two years if, after a review of the progress made during the period of such grant, the administering authority is satisfied that a further period is necessary to complete the reconnaissance operation.

(4) The area that may be granted under one reconnaissance permit shall not exceed a block of two degree latitude by two degree longitude.

(5) The administering authority may grant reconnaissance permits to more than one person in respect of the same area for the same mineral deposits in the interest of offshore mineral development.

12. (1) The administering authority may grant an exploration licence to any person who—

Grant of exploration licence.

(a) is eligible under section 6 for grant of operating right;

(b) produces to the satisfaction of the administering authority evidence that such person possesses the requisite technical ability and financial resources to undertake exploration operation based on such scientific parameters basis, as may be prescribed;

(c) submits a work programme for the area applied for, prepared in such manner and supported by such data as may be prescribed, setting forth the activities proposed to be carried out during the period of the exploration licence including the intended exploration schedule and methods to be used, an estimated schedule of expenditure, measures to prevent pollution and protect the environment and to monitor the effectiveness of environmental safeguards subject to the modifications which the administering authority may make in such work programme;

(d) undertakes not to deviate from the work programme for exploration licence approved by the administering authority; and

(e) has fulfilled to the satisfaction of administering authority all his statutory obligations under any operating right previously—

(i) granted; or

(ii) transferred in the prescribed manner,

to him.

(2) The administering authority may, if there is any reasonable cause to believe that any person, to whom an exploration licence has been granted, has violated any undertaking given under clause (d) of sub-section (1), terminate the exploration licence.

(3) All applications for the grant of exploration licence received within the prescribed time and which satisfy the conditions specified in sub-section (1) shall be considered together and while making a selection for the grant of exploration licence, the administering authority shall follow the procedures given below, namely:—

(a) where only one application is received in respect of an area, the administering authority may grant the exploration licence to the applicant;

(b) where two or more applications are received in respect of the same area or substantially the same area, the order of preference shall be as follows, namely: —

(I) preference shall be given to an applicant who requires the mineral for use in an industry either already owned by the applicant or who has taken sufficient steps to set up such industry:

Provided that where there are more than one application of such category, the administering authority may grant licence based on a comparative evaluation of the—

(i) nature, quality and experience of the technical personnel employed by the applicant;

(ii) financial resources of the applicant;

(iii) nature and quantum of the exploration work proposed by the applicant; and

(iv) nature, quality and quantum of data submitted along with the programme of exploration;

(II) in case of other applicants, not covered under sub-clause (I), the administering authority may grant licence based on a comparative evaluation of matters stated in clauses (i) to (iv) of the proviso to sub-clause (I).

(4) The period for which an exploration licence may be granted shall not exceed three years.

(5) An exploration licence granted under sub-section (1) may be renewed for a period not exceeding two years if, after a review, the administering authority is satisfied that the licensee has been conducting the exploration operation in accordance with the work programme

approved by the administering authority regarding such licence and longer period of renewal of the licence is considered necessary to enable the licensee to complete exploration.

(6) The area that may be granted under exploration licence shall not exceed a block of thirty minutes latitude by thirty minutes longitude:

Provided that if the administering authority is of the opinion that in the interest of the development of any mineral, it is necessary so to do, it may, for reasons to be recorded in writing, permit any person to acquire an area in excess of the area specified in this sub-section.

13. (1) The administering authority shall grant a production lease to any person who—

Grant of
production
lease.

(a) is eligible under section 6 for grant of operating right;

(b) produces to the satisfaction of the administering authority evidence that such person possesses the requisite technical ability and financial resources to undertake production operation based on such scientific parameters basis, as may be prescribed;

(c) submits a work programme for the systematic development of the mineral deposits of the area applied for, prepared in such manner and supported by such data as may be prescribed and obtained through exploration operation, setting forth the activities proposed to be carried out during the period of the lease including the resources assessment of the area, the intended schedule of commercial production, methods and technologies to be used for commercial production and processing, measures to be taken to protect the environment and to monitor the effectiveness of environmental safeguards:

(d) undertakes not to deviate from work programme for production lease approved by the administering authority; and

(e) has fulfilled to the satisfaction of the administering authority all the statutory obligations under any operating right previously—

(I) granted; or

(II) transferred in the prescribed manner,

to him:

Provided that a licensee shall have the exclusive right to a production lease over such part of the land covered by his exploration licence as he may desire subject to the condition that the administering authority is satisfied that the licensee —

(i) has undertaken exploration operation to establish mineral resources in such land;

(ii) has not committed any breach of the terms and conditions of the exploration licence; and

(iii) has not become ineligible under the provisions of this Act.

(2) The administering authority may, if there is any reasonable cause to believe that any person, to whom a production lease has been granted, has violated any undertaking given under clause (d) of sub-section (1), terminate the production lease.

(3) The period for which a production lease may be granted shall not exceed thirty years.

(4) A production lease granted under sub-section (1) may be renewed for a period not exceeding twenty years, if, after a review, the administering authority is satisfied that the

lessee has been conducting the production operation in accordance with the work programme approved by the administering authority regarding such lease.

(5) The area under a production lease shall not exceed a block of fifteen minutes latitude by fifteen minutes longitude:

Provided that if the administering authority is of the opinion that in the interest of the development of any mineral, it is necessary so to do, it may, for reasons to be recorded in writing, permit any person to acquire an area in excess of the area specified in this subsection.

Period of
commence-
ment of
operating
rights.

14. A holder of operating right shall commence operation within the period specified below after the grant of the operating right and shall thereafter conduct such operation in proper, skilful and workman-like manner, as follows: —

- (a) reconnaissance permit - six months;
- (b) exploration licence - one year; and
- (c) production lease - two years.

Power of
Central
Government
to authorise
survey,
research and
scientific
investigations
in areas
covered under
operating
rights.

15. Any person or agency authorised by notification in the Official Gazette, by the Central Government in this behalf, may conduct survey, research, diving operations and scientific investigations in the offshore areas, including any area covered under operating rights and the permittee, licensee or lessee, as the case may be, shall permit such persons or agencies to undertake the said investigations in their respective areas and to render such assistance as may be necessary for conduct of the investigations.

Royalty.

16. (1) A lessee shall pay royalty to the Central Government in respect of any mineral removed or consumed by him from the area covered under the production lease, at the rate for the time being specified in the First Schedule in respect of that mineral.

(2) The Central Government may, by notification in the Official Gazette, amend the First Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification:

Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years.

Fixed rent.

17. (1) A lessee shall pay to the Central Government, every year, fixed rent in respect of the area covered under the production lease, at the rate for the time being specified in the Second Schedule:

Provided that where the lessee becomes liable under section 16 to pay royalty for any mineral removed or consumed by him from the area covered under such lease, he shall be liable to pay either such royalty or the fixed rent in respect of that area, whichever is greater.

(2) The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which fixed rent shall be payable in respect of any area covered under a production lease and such enhancement or reduction shall take effect from such date as may be specified in the notification:

Provided that the Central Government shall not enhance the rate of the fixed rent more than once during any period of three years.

Contribution
towards
International
Seabed
Authority.

18. Every lessee whose production operation extends beyond two hundred nautical miles from the baseline from which the breadth of the territorial sea is measured, shall pay in advance, in addition to other payments required under this Act, to the Central Government,

the amount to be paid to the International Seabed Authority towards fulfilment of obligation of the Central Government under Article 82 of the United Nations Convention on Law of the Sea, 1982.

19. (1) The permittee, licensee, lessee or any other person undertaking the reconnaissance operation or exploration operation or production operation under sub-section (1) of section 5 or any agency undertaking the reconnaissance operation or exploration operation under the proviso to sub-section (1) of the said section shall be responsible to ensure that the concerned operation is conducted with due regard to the safety and health of persons including divers and safety and security of property engaged in the operation.

Safety of persons and property.

(2) The Central Government may, by notification in the Official Gazette, declare safety zones in respect of offshore activities as may be necessary and prescribe the norms for regulating the safety and health of persons and safety of property engaged in operations authorised under this Act, the implementation thereof and matters connected therewith.

(3) In the event of any contravention of provisions of sub-section (1) or the norms prescribed under sub-section (2) by the permittee, licensee, lessee or any other person undertaking the reconnaissance operation or exploration operation or production operation under sub-section (1) of section 5 or any other agency undertaking the reconnaissance operation or exploration operation under the proviso to sub-section (1) of the said section, shall also be deemed to be responsible for such contravention unless he or it proves that he or it, as the case may be, had taken all reasonable precautions within his or its means for enforcing those provisions, to prevent such contravention.

20. (1) Every holder of the operating rights shall carry out the operations authorised under this Act subject to the provisions of this Act and the rules made thereunder and any other law and the rules made thereunder, for the time being in force for the prevention and control of pollution and protection of marine environment.

Prevention and control of pollution and protection of marine environment.

(2) Every holder of an operating right shall be liable for any pollution of, or damage to, the marine environment resulting from his activities relating to his operating right in the offshore areas and shall pay such compensation, as may be determined by the administering authority keeping in view the extent of pollution or damage, as the case may be.

(3) The Central Government may prescribe measures to be taken for prevention and control of pollution and protection of marine environment due to activities in the offshore areas.

21. (1) The permittee, licensee or lessee shall comply with such directions as the Central Government or the administering authority may issue, from time to time, for the conservation and systematic development of offshore minerals, prevention of pollution, protection of marine environment, prevention of coastal erosion or prevention of danger to life or property including the marine life.

Power of Central Government and administering authority to issue directions.

(2) The permittee, licensee or lessee shall comply with such directions as may be issued from time to time by the competent authority or Coast Guard regarding national security, safety and national integrity.

Explanation.— "competent authority" means the competent authority appointed for the purposes of sub-section (2) by the Central Government in the Ministry dealing with defence of India.

CHAPTER III

POWER OF ENTRY, INSPECTION, SEARCH AND SEIZURE

22. (1) For the purpose of ascertaining the position of the working, actual or prospective, of any mine or abandoned mine, or for any other purpose connected with this Act or the rules made thereunder, any officer authorised, by the Central Government in this behalf, by general or special order, may, —

Power of entry, inspection, search and seizure.

(a) enter and inspect, at all reasonable times, any mine;

(b) weigh, draw samples or take measurements of the stocks of minerals recovered from any mine;

(c) survey and take samples and measurements in any such mine;

(d) examine any document, book, register or record in the possession or power of any person having the control of, or connected with, any mine and place marks of identification thereon and take extracts from, or make copies of, such document, book, register or record;

(e) order the production of any such document, book, register and record, by the person referred to in clause (d); and

(f) examine any person having the control of, or connected with, any mine.

(2) Any authorised officer may, for the purpose of ascertaining whether or not the requirements of this Act or any rule made thereunder have been complied with, either with, or where it is not possible to obtain warrant conveniently, then, without, a warrant,—

(a) search any mine;

(b) stop or board and search any vessel which is engaged or which is likely to be engaged in any activity regulated under this Act; and

(c) require the person for the time being having command or charge of mine or such vessel to produce any licence, permit, log book or other document relating, to the vessel or mine and examine or take copies of such licence, permit, log book or other document, as the case may be, for ascertaining the requirements of sub-section (1).

(3) Where the authorised officer has reason to believe that any vessel or mine has been, or is being, or is about to be, used or employed, as the case may be, in violation of any provision of this Act or rule made thereunder, he may, with, or where it is not possible to obtain warrant conveniently, then, without, a warrant,—

(a) seize and detain such vessel or mine, including any gear, equipment, stores or cargo found on board such vessel or belonging to the vessel and seize any mineral found on board the vessel;

(b) seize any evidence related to violation of any provision of this Act or rule made thereunder;

(c) require the person for the time being having command or charge of the vessel, platform or erection of the mine so seized or detained to bring such vessel, platform or erection to any specified port;

(d) arrest any person whom such officer has reason to believe, has committed such violation:

Provided that the authorised officer, after arresting such person and before producing him before the competent court, shall inform the administering authority regarding the arrest and grounds of arrest communicated to the person so arrested.

(4) In taking any action under sub-section (3), the authorised officer may use such force as may be reasonably necessary.

(5) Where any vessel or other things are seized or detained, under sub-section (3),—

(a) the vessel or other things so seized or detained shall, as soon as possible, be produced before the court competent to try an offence under this Act and the court shall make such order as it may deem fit for the retention or custody of such vessel or

things with the Central Government or any other authority pending the completion of any proceedings for the prosecution of any offence relating to such vessel or things, as the case may be, under this Act or rules made thereunder:

Provided that the court may, on an application made by the owner or the person for the time being having command or charge of the vessel or mine, order the release of the vessel or other things so seized or detained, to the owner or the person for the time being having command or charge of the vessel or mine, furnishing security in the form of cash or a bank guarantee for an amount which is not less than fifty per cent. of the value of the vessel or things so seized or detained;

(b) the administering authority shall be informed by the authorised officer of such seizure and the details thereof.

(6) Where, in pursuance of the commission of any offence under this Act, any vessel is pursued beyond the limits of the offshore area, the powers conferred on an authorised officer by this section may be exercised beyond such limits in the circumstances and to the extent recognised by international law and State practice.

(7) Every person to whom an order or warrant is issued or given by virtue of the powers conferred by this section shall be legally bound to comply with such order or warrant.

Explanation.—For the purposes of this section,—

(i) "authorised officer" means an officer of the Central Government notified as such in the Official Gazette, by the Central Government;

(ii) "warrant" means a warrant issued by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose jurisdiction the place, where the warrant is to be executed, is situated.

CHAPTER IV

OFFENCES

23. (1) (a) Whoever undertakes any reconnaissance operation, exploration operation or production operation in offshore area without any permit, licence or lease, as the case may be, granted under this Act shall be punished with imprisonment for a term which may extend to five years, or with fine which may extend to fifty thousand rupees, or with both. Offences.

(b) A permittee, licensee or lessee who does not furnish any data, information or document under sub-section (2) of section 5, in the manner provided therein, shall be punished with imprisonment which may extend to three years, or with fine which may extend to twenty-five thousand rupees, or with both.

(c) Any vessel, together with its gear, boats, stores and cargo, used or employed in violation of section 5, along with any mineral recovered or processed in violation of that section, if any, shall be confiscated.

(d) Whoever ships, transports, offers for sale, sells, purchases, imports, exports, or has custody, control or possession of any mineral recovered, processed or retained in violation of this Act or any rule made thereunder shall be punished with imprisonment which may extend to three years, or with fine which may extend to fifty lakh rupees, or with both.

(2) Whoever—

(a) intentionally obstructs any authorised officer referred to in section 22 in the exercise of any powers conferred under this Act; or

(b) fails to afford reasonable facilities to the authorised officer referred to in section 22 or his assistant to board the vessel or enter the mine or to provide for adequate security to such officer or assistant at the time of entry into the vessel or mine or when they are on board such vessel or mine; or

(c) fails to stop the vessel or mine or to produce the licence, permit, log book or any other document, as the case may be, on board such vessel, or mine, when required to do so by the authorised officer referred to in section 22; or

(d) interferes with, delays, or prevents, by any means, the lawful apprehension of any person under this Act,

shall be punished with imprisonment for a term which may extend to five years, or with fine which may extend to fifty thousand rupees, or with both.

(3) Whoever contravenes any other provision of this Act or rules made thereunder, other than those specified in sub-sections (1) and (2) shall, be punished with imprisonment for a term which may extend to five years, or with fine which may extend to one crore rupees, or with both, and in the case of continuing contravention, with an additional fine which may extend to five lakh rupees for every day during which such contravention continues.

Offences by companies.

24. (1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge and that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act, has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Place of trial.

25. Notwithstanding anything contained in other law for the time being in force, any person committing an offence under this Act or any rule made thereunder or under any of the enactment extended under this Act or under the rules made thereunder shall be tried for the offence in such place as the Central Government may, by general or special order published in the Official Gazette, direct in this behalf.

Previous sanction of Central Government for prosecution.

26. No prosecution for an offence committed under this Act shall be instituted except with the previous sanction of the Central Government or such officer or authority as may be authorised by the Central Government, by order in writing in this behalf.

Offences triable by Court of Session.

27. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act shall be triable by the Court of Session. 2 of 1974.

CHAPTER V

CIVIL LIABILITY AND ADJUDICATION

Civil liability and adjudication.

28. (1) A person to whom a permit, licence, or lease is granted under this Act,—

(a) contravenes the general terms and conditions imposed by the rules made

under this Act shall be liable to pay to the Central Government an amount which shall not be less than five lakh rupees and which may extend to one crore rupees;

(b) contravenes any particular terms and conditions applicable only in case of such licensee, lessee, or permittee, as the case may be, shall also be liable, apart from the liability under clause (a), to pay additional amount to the Central Government which shall not be less than one lakh rupees and which may extend to ten lakh rupees.

(2) No court or other authority except the authorised officer designated by the Central Government for this purpose, shall have jurisdiction to hear and decide the cases relating to clauses (a) and (b) of sub-section (1).

(3) An officer of the Central Government who has been authorised by that Government to file an application before the authorised officer designated under sub-section (2), shall file an application against licensee, lessee, or permittee, as the case may be, indicating the civil wrong committed by him under clause (a) or clause (b) of sub-section (1) in such manner as may be prescribed.

(4) When an application is filed under sub-section (3), before an authorised officer designated under sub-section (2), he shall serve notice along with the copy of such application to the person, against whom the application is made, to provide him an opportunity to file reply to the application in the prescribed manner and the authorised officer shall dispose of the case after considering the evidence produced either in support or in opposition to the application and after providing the opportunity of hearing.

(5) For the purposes of this section, the authorised officer designated under sub-section (2), shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions; and

(f) any other matter which may be prescribed.

CHAPTER VI

MISCELLANEOUS

29. The Central Government may, by notification in the Official Gazette,—

(a) extend with such restrictions and modifications as it thinks fit, any enactment for the time being in force in India or any part thereof to the offshore area or any part thereof; and

(b) make such provisions as it may consider necessary for facilitating the enforcement of such enactment;

and any enactment so extended shall have effect as if the offshore area or the part thereof, as the case may be, is a part of the territory of India.

Extension of enactments to offshore areas.

30. (1) Any offence punishable under this Act may either before or after the institution of the prosecution, be compounded by the administering authority or any other officer authorised by the Central Government with respect to that offence, on payment for credit to that Government of such sum as that administering authority or officer as the case may be, may specify:

Compounding of offences.

Provided that such sum shall not, in any case, exceed the maximum amount of the fine which may be imposed under this Act for the offence so compounded.

(2) Where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded and the offender, if in custody, shall be released forthwith.

Recovery of certain sums as arrears of land revenue.

31. Any licence fee, royalty, fixed rent, or other sum due to the Central Government under this Act or rules made thereunder or under the terms and conditions of a reconnaissance permit, exploration licence or production lease may, on a certificate issued by the administering authority, be recovered in the same manner as if it were an arrear of land revenue and every such sum together with the interest due thereon, shall be the first charge on the assets of the permittee, licensee or lessee, as the case may be.

Delegation of powers.

32. The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or any rule made thereunder may, in relation to such matter and subject to such conditions, if any, as may be specified in the notification, be exercisable also by such officer or authority subordinate to that Government as may be specified in the notification.

Protection of action taken in good faith.

33. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

Appeals.

34. (1) Subject to the provisions of sub-section (2), any person aggrieved by an order made by administering authority or any officer under this Act or the rules made thereunder may prefer an appeal against such order to the Central Government.

(2) Every such appeal shall be preferred within prescribed period from the date on which the impugned order was made:

Provided that the Central Government may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within such prescribed period, permit the appellant to prefer the appeal within a further period as may be prescribed.

(3) On receipt of any such appeal, the Central Government shall, after giving the parties to the appeal a reasonable opportunity of being heard and after making such inquiry as it deems proper, make such order, as it may think fit, confirming, modifying or reversing the order appealed against or may send back the case with such direction as it may think fit for a fresh order after taking additional evidence, if necessary.

Power to make Rules.

35. (1) The Central Government may, by notification in the official Gazette, make rules for the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the terms and conditions of a reconnaissance permit, exploration licence or production lease under sub-section (1) of section 5;

(b) conditions for grant of operating right under clause (b) of section 6;

(c) substances to be prescribed under proviso to section 6;

(d) the requisite technical ability and financial resources to undertake exploration operation on scientific parameters basis under clause (b) of sub-section (1) of section 12;

(e) the manner in which a work programme shall be prepared and the data by which the work programme shall be supported under clause (c) of sub-section (1) of section 12;

(f) the manner of transfer referred to in sub-clause (ii) of clause (e) of sub-section (1) of section 12;

(g) the time within which the applications under sub-section (3) of section 12 are to be received;

(h) the requisite technical ability and financial resources to undertake production operation on scientific parameters basis under clause (b) of sub-section (1) of section 13;

(i) the manner in which a work programme shall be prepared and the data by which the work programme shall be supported under clause (c) of sub-section (1) of section 13;

(j) the manner of transfer referred to in sub-clause (II) of clause (e) of sub-section (1) of section 13;

(k) norms for regulating the safety and health of persons and safety of property engaged in operations authorised under this Act, the implementation thereof and matters connected therewith under sub-section (2) of section 19;

(l) the measures to be taken for prevention and control of pollution and protection of marine environment due to activities in the offshore areas under sub-section (3) of section 20;

(m) the manner of filing application under sub-section (3) of section 28;

(n) the manner of filing reply under sub-section (4) of section 28;

(o) any other matter under clause (f) of sub-section (5) of section 28;

(p) the period within which appeal shall be preferred under, and the further period which may be permitted under the proviso to, sub-section (2) of section 34;

(q) any other matter which is to be, or may be, prescribed under this Act.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

36. Notwithstanding anything to the contrary contained in this Act or any rule made thereunder the Central Government may, if it is of the opinion that in the interests of the offshore mineral development, it is necessary so to do, by order and for reasons to be recorded in writing, authorise in any specific case the grant, renewal or transfer of any operating right to any person on such terms and conditions as it may specify in this behalf in such order.

Relaxation in specific cases.

37. The administering authority or any other officer shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of the Indian Penal Code.

Persons to be public servants.

38. (1) If any difficulty arises in giving effect to the provisions of this Act, or of any of the enactment extended under section 29, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or, as the case may be, of such enactment, as may appear to it to be necessary or expedient for removing the difficulty:

Removal of difficulties.

Provided that no order shall be made under this section,—

(a) in the case of any difficulty arising in giving effect to any provisions of this Act, after the expiry of three years from the commencement of such provision;

(b) in the case of any difficulty arising in giving effect to the provisions of any enactment extended under section 29, after the expiry of three years from the extension of such enactment.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE FIRST SCHEDULE

[See section 16 (1)]

RATES OF ROYALTY

- | | |
|---|--|
| 1. Brown, ilmenite (leucoxene), Ilmenite, Rutile and Zircon | Two per cent. of sale price on <i>ad valorem</i> basis. |
| 2. Dolomite | Forty rupees per tonne. |
| 3. Garnet | Three per cent of sale price on <i>ad valorem</i> basis. |
| 4. Gold | One and half per cent. of London Bullion Market Association price (commonly referred to as "London Price") chargeable on the contained gold metal in ore produced. |
| 5. Limestone and Lime mud | Forty rupees per tonne. |
| 6. Manganese Ore | Three per cent. of sale price on <i>ad valorem</i> basis. |
| 7. Monazite | One hundred and twenty-five rupees per tonne. |
| 8. Sillimanite | Two and half per cent. of sale price on <i>ad valorem</i> basis. |
| 9. Silver | Five per cent. of London Metal Exchange price chargeable on the contained silver metal in ore produced. |
| 10. All other minerals not hereinbefore specified. | Ten per cent. of sale price on <i>ad valorem</i> basis. |

THE SECOND SCHEDULE

[See section 17(1)]

RATES OF FIXED RENT

Rates of fixed rent in rupees per standard block per annum

| Size | 1st year of the lease | 2nd to 5th year of the lease | 6th to 10th year of the lease | 11th year of the lease and onwards |
|--|--------------------------|------------------------------------|-------------------------------------|--|
| Standard block of 5 minutes longitude by 5 minutes latitude | Nil | Rupees 50,000 | Rupees 1,00,000 | Rupees 2,00,000 |

STATEMENT OF OBJECTS AND REASONS

India has approximately 3.3 million square kilometres of land area with a coast line of 8041 kilometres. The area of the Exclusive Economic Zone is 2.02 million square kilometres and in terms of the UN Convention on the Law of the Sea, 1982, the coastal states have specific rights and jurisdiction, *inter alia*, for exploring and exploiting the natural resources over the continental margin, which will add about 0.80 million square kilometres in addition to the area of Exclusive Economic Zone. In India, beach placer deposits have been economically exploited since long. The mining and processing of different minerals obtained from these placer deposits into valuable products are also well established. India is richly endowed in mineral sands in the Eastern and Western Coasts. Heavy mineral sand containing mostly ilmenite with some rutile, leucoxene (a decomposition product of ilmenite), garnet, zircon, monazite and aluminium silicates like silimanite and kyanite occur in isolated to extensive spreads all along the sea coast.

2. In order to develop the offshore areas scientifically and systematically, the need was felt to have a proper legal frame-work for regulation and development of minerals occurring in the offshore areas, that is, territorial waters, continental shelf, exclusive economic zone and other maritime zones of India. A Working Group was constituted to suggest a suitable legislation and rules for regulating prospecting and mining in the offshore areas
a f t e r examining the existing legislation on the subject viz. the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), and the Territorial Waters, Continental Shelf, Exclusive Zone and other Maritime Zones Act, 1976 (80 of 1976) and other related matters. The Working Group came to the conclusion that it would be advisable to frame a new enactment for mineral exploitation in the offshore areas. The Government has carefully considered the recommendations of the Working Group and has decided that a law relating to development and regulation of minerals in offshore areas may be enacted.

3. Some of the highlights of the proposed legislation are as follows:—

- (i) There will be three types of operating rights, namely:—
Reconnaissance permit (non exclusive), exploration licence and production lease.
- (ii) The offshore areas will be released periodically for grant of operating rights only after inter-departmental consultation with the Ministries/Departments which have parallel interest in the offshore areas.
- (iii) Exploration licence or production lease will be granted to any person over an area only upon submission of a work programme for the exploration operation, or development of the mineral deposits in that area. This would ensure that exploration and mining operations in the offshore areas are conducted on a scientific basis with due regard to conservation.
- (iv) No operating right shall be granted to any person unless such person is an Indian national or a company as defined in sub-section (1) of section 3 of the Companies Act, 1956 (1 of 1956).
- (v) The holder of the reconnaissance permit shall commence work within a period of six months, the holder of the exploration licence shall commence work within a period of one year and the holder of the production lease shall commence commercial production within a period of two years from the date of grant.
- (vi) Reconnaissance permit will be granted for a maximum period of two years with the provision for renewal for another maximum period of two years. Exploration licence shall be granted initially for a maximum period of three years with a provision for renewal so that the total period of exploration does not exceed five years. Production lease shall be granted initially for a period not exceeding thirty years with the provision for renewal for twenty years.

(vii) The Central Government is being authorised by notification in the Official Gazette to prescribe norms for the safety and health of persons and safety and security of property in offshore areas.

(viii) There is a provision for payment of royalty and in order to discourage the speculative acquisition of large areas, there is also provision for payment of fixed rent. The rate will be prescribed by notification, with the proviso that royalty and fixed rent shall not be enhanced more than once during any period of three years.

(ix) In order to safeguard defence and security of the country, the provisions of the proposed legislation shall be in addition to and not in derogation of any other law for the time being in force in the offshore areas.

(x) There is an enabling clause for making rules to address problems of pollution of offshore environment and security and safety of marine life including fin and shell fish, coral and other species. Every holder of the operating rights shall be liable for any pollution or damage to marine environment resulting from activities in the offshore areas.

4. The proposed legislation would enable streamlining of mineral exploration and development in the offshore areas and ensure systematic and scientific exploitation of mineral reserves (except petroleum, natural gas and hydrocarbon resources) for attracting private investment in the mineral sector.

5. The Bill seeks to achieve the above objects.

NEW DELHI;
The 18th August, 2001.

SUNDAR LAL PATWA .

FINANCIAL MEMORANDUM

The proposed legislation aims at providing for regulation and development of mineral resources in the territorial waters, continental shelf, exclusive economic zone and other maritime zones of India and to provide for matters connected therewith or incidental thereto. The Bill when enacted would help in streamlining mineral exploration and development in the offshore areas for attracting private investment in the mineral sector. The legislation would be implemented by the designated administering authority in the Central Government.

2. As per clause 4 (a) of the Bill, the administering authority shall be notified, in the Official Gazette, by the Central Government for the purposes of the proposed legislation. The appropriate officer of the Indian Bureau of Mines, the subordinate office of the Ministry of Mines would be designated as the administering authority under the proposed legislation. Hence, at this stage, no recurring or non recurring expenditure is involved in the administration of the proposed legislation.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 35 of the Bill empowers the Central Government to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of this clause enumerates the matters with respect to which rules may be made under this clause. These matters relate to, *inter alia*, the terms and conditions of a reconnaissance permit, exploration licence and production lease, conditions for grant of operating right, the requisite technical ability and financial resources to undertake exploration operation and the production operation on a scientific parameters basis, the manner of preparation of work programme and the data by which the work programme shall be supported, the time within which the applications for exploration licence are to be received, the norms for regulating the safety and health of persons and safety of property engaged in operations authorised under the proposed legislation, the implementation thereof and the matters connected therewith, the measures to be taken for prevention and control of pollution and protection of marine environment due to activities on offshore areas, the person to be authorised officers, the manner of filing application against licensee, lessee or permittee and reply to such application under the proposed legislation and any other matter which is to be or may be prescribed, etc.

2. The aforesaid matters relate to procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of normal character.

II

BILL NO. 84 OF 2001

A Bill further to amend the Constitution (Scheduled Castes) Order, 1950, the Constitution (Scheduled Castes) (Union Territories) Order, 1951, the Constitution (Jammu and Kashmir) Scheduled Castes Order, 1956, the Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962 and the Constitution (Pondicherry) Scheduled Castes Order, 1964.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. This Act may be called the Constitution Scheduled Castes Orders (Amendment) Act, 2001.

Short title.

2. (1) The Schedule to the Constitution (Scheduled Castes) Order, 1950 is hereby amended in the manner and to the extent specified in Schedule I.

Amendment
of Scheduled
Castes Orders.

(2) The Schedule to the Constitution (Scheduled Castes) (Union Territories) Order, 1951 is hereby amended in the manner and to the extent specified in Schedule II.

(3) The Constitution (Jammu and Kashmir) Scheduled Castes Order, 1956 is hereby amended in the manner and to the extent specified in Schedule III.

(4) The Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962 is hereby amended in the manner and to the extent specified in Schedule IV.

(5) The Constitution (Pondicherry) Scheduled Castes Order, 1964 is hereby amended in the manner and to the extent specified in Schedule V.

SCHEDULE I

[See section 2(1)]

AMENDMENT TO THE CONSTITUTION (SCHEDULED CASTES) ORDER, 1950

1. In PART I.— *Andhra Pradesh*,—

(i) for entry 9, substitute—

“9. Beda (Budga) Jangam (in the districts of Hyderabad, Ranga Reddy, Mahbubnagar, Adilabad, Nizamabad, Medak, Karimnagar, Warangal, Khammam and Nalgonda)”;

(ii) for entry 11, substitute—

“11. Byagara, Byagari”;

(iii) for entry 14, substitute—

“14. Chamar, Mochi, Muchi, Chamar-Ravidas, Chamar-Rohidas”;

(iv) for entry 23, substitute—

“23. Godagali, Godagula (in the districts of Srikakulam, Vizianagaram and Vishakhapatnam)”;

(v) for entry 30, substitute—

“30. Kolupulavandlu, Pambada, Pambanda, Pambala”;

(vi) for entry 35, substitute—

“35. Mala, Mala Ayawaru”;

(vii) omit entry 52;

(viii) after entry 59, insert—

“60. Yatala

61. Valluvan”.

2. In PART III.— *Bihar*,—

(i) for entry 6, substitute—

“6. Chamar, Mochi, Chamar-Rabidas, Chamar-Ravidas, Chamar-Rohidas, Charmarkar”;

(ii) for entry 9, substitute—

“9. Dhobi, Rajak”;

(iii) for entry 10, substitute—

“10. Dom, Dhangad, Bansphor, Dharikar, Dharkar, Domra”;

(iv) for entry 20, substitute—

“20. Pan, Sawasi, Panr”.

3. In PART IV.— *Gujarat*,—

(i) for entry 4, substitute—

"4. Bhambi, Bhambhi, Asadaru, Asodi, Chamadia, Chamar, Chamar-Ravidas, Chambhar, Chamgar, Haralayya, Harali, Khalpa, Machigar, Mochigar, Madar, Madig, Mochi (in Dangs district and Umergaon Taluka of Valsad district only), Nalia, Telegu Mochi, Kamati Mochi, Ranigar, Rohidas, Rohit, Samgar";

(ii) for entry 5, substitute—

"5. Bhangi, Mehtar, Olgana, Rukhi, Malkana, Halalkhor, Lalbegi, Balmiki, Korar, Zadmali, Barwashia, Barwasia, Jamphoda, Zampada, Zampda, Rushi, Valmiki".

4. In PART V.—*Haryana*.—

(i) for entry 9, substitute—

"9. Chamar, Jatia Chamar, Rehgar, Raigar, Ramdasi, Ravidasi, Balahi, Batoi, Bhato, Bhambi, Chamar-Rohidas, Jatav, Jatava, Mochi, Ramdasia";

(ii) for entry 23, substitute—

"23. Mazhabi, Mazhabi Sikh";

(iii) for entry 25, substitute—

"25. Nat, Badi";

(iv) for entry 34, substitute—

"34. Sapela, Sopera";

(v) for entry 36, substitute—

"36. Sikligar, Bariya".

5. In PART VI.—*Himachal Pradesh*, after entry 56, insert—

"57. Barwala";

6. In PART VII.—*Karnataka*.—

(i) for entry 17, substitute—

"17. Banjara, Lambani, Lambada, Lambadi, Lamani, Sugali, Sukali";

(ii) for entry 23, substitute—

"23. Bhovi, Od, Odde, Vaddar, Waddar, Voddar, Woddar";

(iii) for entries 53 and 54, substitute—

"53. Koracha, Korachar

54. Korama, Korava, Koravar".

7. In PART VIII.—*Kerala*.—

(i) omit entries 9 and 11;

(ii) for entry 12, substitute—

"12. Bharathar (other than Parathar), Paravan";

(iii) omit entries 13, 19, 20 and 21;

(iv) for entry 26, substitute—

"26. Kakkalan, Kakkan";

(v) for entry 28, substitute—

"28 Kanakkan, Padanna, Padannan";

(vi) for entry 30, substitute—

“30. Kavara (other than Telugu speaking or Tamil speaking Balija, Kavarai, Gavara, Gavarai, Gavarai Naidu, Balija Naidu, Gajalu Balija or Valai Chetty)”;

(vii) for entry 34, substitute—

“34. Kuravan, Sidhanar, Kuravar, Kurava, Sidhana”;

(viii) for entry 37, substitute—

“37. Mannan, Pathiyan, Perumannan, Vannan, Velan”;

(ix) for entry 39, substitute—

“39. Moger (other than Mogeyar)”;

(x) omit entries 44 and 49;

(xi) for entry 50, substitute—

“50. Paraiyan, Parayan, Sambavar, Sambavan, Sambava, Paraya, Paraiya, Parayar”;

(xii) omit entries 51 to 53;

(xiii) for entry 54, substitute—

“54. Pulayan, Cheramar, Pulaya, Pulayar, Cherama, Cheraman, Wayanad Pulayan, Wayanadan Pulayan, Matha, Matha Pulayan”;

(xiv) omit entry 55;

(xv) for entry 60, substitute—

“60. Semman, Chemman, Chemmar”;

(xvi) omit entries 65 and 66;

(xvii) for entry 68, substitute—

“68. Vettuvan, Pulaya Vettuvan (in the areas of erstwhile Cochin State only);

69. Nerian”.

8. In PART IX.—*Madhya Pradesh*.—

(i) for entry 36, substitute—

“36. Mahar, Mehra, Mehar, Mahara”;

(ii) after entry 47, insert—

“48. Sargara”.

9. In PART XIII.—*Orissa*.—

(i) for entry 2, substitute—

“2. Amant, Amat, Dandachhatra Majhi”;

(ii) for entry 10, substitute—

“10. Bauri, Buna Bauri, Dasia Bauri”;

(iii) for entry 24, substitute—

“24. Dewar, Dhibara, Keuta, Kaibarta”;

(iv) for entry 42, substitute—

“42. Kandra, Kandara, Kadama”;

(v) for entry 45, substitute—

“45. Kela, Sapua Kela, Nalua Kela, Sabakhia Kela, Matia Kela”;

(vi) for entry 56, substitute—

“56. Mala, Jhala, Malo, Zala, Malha, Jhola”;

(vii) for entry 69, substitute—

“69. Pan, Pano, Buna Pana, Desua Pana”;

(viii) for entry 86, substitute—

“86. Siyal, Khajuria”.

10. In PART XIV.—*Punjab*,—

(i) for entry 5, substitute—

“5. Batwal, Barwala”;

(ii) for entry 23, substitute—

“23. Mazhabi, Mazhabi Sikh”.

11. In PART XVII.—*Tripura*, after entry 32, insert—

“33. Dhuli, Sabdakar, Badyakar

34. Natta, Nat”.

12. In PART XXI.—*Arunachal Pradesh*,— omit entries 1 to 16.

SCHEDULE II

[See section 2(2)]

AMENDMENT TO THE CONSTITUTION (SCHEDULED CASTES) (UNION TERRITORIES) ORDER, 1951

1. In PART I.—*Delhi*, for entry 29, substitute—

“29. Nat (Rana), Badi”.

2. In PART II.—*Chandigarh*, for entry 4, substitute—

“4. Batwal, Barwala”.

3. In PART III.—*Daman and Diu*, for entry 2, substitute—

“2. Chambhar, Mochi”.

SCHEDULE III

[See section 2(3)]

AMENDMENT TO THE CONSTITUTION (JAMMU AND KASHMIR) SCHEDULED CASTES ORDER, 1956

1. For entry 4, substitute—

“4. Chamar or Ramdasia, Chamar-Ravidas, Chamar-Rohidas”;

2. For entry 5, substitute—

“5. Chura, Bhangi, Balmiki, Mehtar”;

3. For entry 7, substitute—

“7. Doom or Mahasha, Dumna.”.

SCHEDULE IV

[See section 2(4)]

AMENDMENT TO THE CONSTITUTION (DADRA AND NAGAR HAVELI) SCHEDULED CASTES ORDER,
1962

For entry 4, substitute—

“4. Mahayavanshi.”.

SCHEDULE V

[See section 2(5)]

AMENDMENT TO THE CONSTITUTION (PONDICHERRY) SCHEDULED CASTES ORDER, 1964

After entry 15, insert—

“16. Puthirai Vannan.”.

STATEMENT OF OBJECTS AND REASONS

As per the provisions of articles 341 and 342 of the Constitution, the list of the Scheduled Castes and the Scheduled Tribes was first notified in 1950 and this List was modified from time to time. A number of requests were received from the State Governments for removing certain anomalies in the list, such as correction of spelling errors, inclusion of synonymous communities, imposing area restrictions, checking linguistic and phonetic variations and clubbing certain entries, etc.

2. The above requests have been processed as per the modalities approved by the Cabinet Committee on the Scheduled Castes, the Scheduled Tribes and Minorities on 15th June, 1999. After consultation with the State Governments/Union territory Administrations concerned, the Registrar General of India and the National Commission for the Scheduled Castes and the Scheduled Tribes, the list of Scheduled Castes is proposed to be amended for 18 States and Union territory Administrations in respect of 81 communities.

3. The proposed amendments in the Constitution Scheduled Castes Orders (Amendment) Bill, 2001 broadly fall under the following categories, namely:—

- (i) inclusion of synonyms in respect of a caste in the existing list;
- (ii) clubbing castes in the existing list, which are similar to one another from social and anthropological point of view;
- (iii) corrections in spelling of the caste, in the existing list, keeping in view the linguistic and phonetic variations;
- (iv) imposition of area restriction in the specific castes in the existing list, keeping in view relative social, educational and economic position;
- (v) inclusion of new castes based on social, educational and economic backwardness;
- (vi) modifications in the existing entries in accordance with directives of Hon'ble High Court of Orissa in the case of *Narayan Behra Vs. State of Orissa* (OJC No. 247 of 1978) and the Supreme Court in *Bhaiya Ram Munda Vs. Anirudh Patar* (A.I.R. 1971 SC 2533); and
- (vii) deletion of communities from the list, in respect of the States of Arunachal Pradesh, Kerala and the Union territory of Dadra and Nagar Haveli.

4. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 22nd August, 2001.

MANEKA GANDHI.

FINANCIAL MEMORANDUM

The Bill seeks to include 8 communities in the existing list of Scheduled Caste and modify the list in respect of 49 other communities in different States and Union Territories. This will entail additional recurring and non-recurring expenditure on account of benefits to be provided to the persons belonging to these communities under continuing schemes, meant for welfare of the Scheduled Castes. The Bill also seeks to exclude 24 communities from the existing list of Scheduled Castes.

2. It is not possible to estimate the likely additional expenditure to be incurred on this account at this stage. However, the expenditure, whether recurring or non-recurring, will be met out of the Consolidated Fund of India.

III

BILL No. 89 OF 2001

A Bill to promote, facilitate and develop in an orderly manner the carriage and content of communications (including broadcasting, telecommunications and multimedia), for the establishment of an autonomous Commission to regulate carriage of all forms of communications, and for establishment of an Appellate Tribunal and to provide for matters connected therewith or incidental thereto.

WHEREAS it is considered necessary—

- (i) to facilitate development of a national infrastructure for an information based society, and to enable access thereto;
- (ii) to provide a choice of services to the people with a view to promoting plurality of news, views and information;
- (iii) to establish a regulatory framework for carriage and content of communications in the scenario of convergence of telecommunications, broadcasting, data-communication, multimedia and other related technologies and services; and
- (iv) to provide for the powers, procedures and functions of a single regulatory and licensing authority and of the Appellate Tribunal.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

CHAPTER I
PRELIMINARY

1. (1) This Act may be called the Communication Convergence Act, 2001.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision of this Act to the commencement of this Act shall be construed as a reference to the commencement of that provision.

Short title, extent
and commence-
ment.

Definitions.

2. In this Act, unless the context otherwise requires,—

(1) "Adjudicating Officer" means an officer of the Commission appointed as Adjudicating Officer under sub-section (1) of section 39;

(2) "Appellate Tribunal" means the Communications Appellate Tribunal established under sub-section (1) of section 43;

(3) "broadcasting service" means a content application service for providing television programme or radio programme, to persons having equipment appropriate for receiving that service regardless of the means of delivery of that service, but does not include—

(a) a service (including a teletext service) that provides only data or text (with or without associated still images); or

(b) a service that makes programme available on demand on a point-to-point basis, including a dial-up service; or

(c) a service or a class of services which the Central Government may notify as not being a broadcasting service;

(4) "Chairperson" means the Chairperson appointed under sub-section (4) of section 7;

(5) "channel" means a set of frequencies used for transmission of a programme;

(6) "Commission" means the Communications Commission of India established under sub-section (1) of section 6 ;

(7) "communication" means the process of conveyance of content through transmission, emission or reception of signals, by wire or other electromagnetic waves;

(8) "communication service" means a networking service or network application service or value added network application service or a content application service;

(9) "content" means any sound, text, data, picture (still or moving), other audio-visual representation, signal or intelligence of any nature or any combination thereof which is capable of being created, processed, stored, retrieved or communicated electronically;

(10) "content application service" means an application service which provides content meant for the public and includes such other services as may be prescribed;

(11) "frequency" means frequency of electro-magnetic waves used for providing a communication service;

(12) "grantee" means a person who has been granted registration under Chapter VII;

(13) "license" means a license granted under Chapter VII or Chapter VIII;

(14) "licensee" means a person who has been granted a license;

(15) "Member" means a Member of the Commission appointed under section 7 and includes the Chairperson;

(16) "network application service" means the service provided by means of one or more networking services and includes such other services as may be prescribed;

(17) "network infrastructure facilities" means any element or combination of elements of physical infrastructure, which would be utilised by licensees for providing networking services and includes such other facilities as may be prescribed;

(18) "networking service" means a service for carrying communications by means of guided or unguided electromagnetic waves and includes such other services as may be prescribed;

(19) "notification" means a notification published in the Official Gazette and the expression "notified", with its cognate meaning and grammatical variation, shall be construed accordingly;

(20) "post" means a post and includes a pole, tower, standard, stay, strut, cabinet, pillar or any above ground contrivance for carrying, suspending or supporting any network infrastructure facility;

(21) "prescribed" means prescribed by rules made by the Central Government under this Act;

(22) "programme" means television or radio programme including advertising or sponsorship, whether or not of a commercial kind, and broadcast programming shall be construed accordingly;

(23) "programme code" means the code specified under section 20;

(24) "public authority" includes—

(i) the Central Government;

(ii) a State Government;

(iii) any person, agency or organisation engaged in land development for public use, or in roads for public transportation;

(iv) any local authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of any municipal or local fund; and

(v) any institution, concern or undertaking or body which is financed wholly or substantially by funds provided directly or indirectly by the Government which may be specified, by notification in this behalf, by the Central Government;

(25) "public service broadcaster" means any body created by an Act of Parliament only for the purpose of public service broadcasting;

(26) "registration" means the registration granted under Chapter VII;

(27) "regulations" means regulations made by the Commission under this Act;

(28) "Secretary-General" means the Secretary-General appointed under sub-section (1) of section 15;

(29) "service provider" includes any person who provides a communication service;

(30) "spectrum" means a continuous range of electromagnetic wave of frequencies up to and including a frequency of 3000 giga hertz;

(31) "Spectrum Manager" means Wireless Advisor to the Government of India notified as Spectrum Manager, Government of India under sub-section (3) of section 23;

(32) "subscriber of a service" means a person who subscribes to a communication service primarily for his own use;

(33) "Universal Service Obligation" means obligation in respect of services as may be prescribed;

(34) "value added network application service" means the service provided by means of value addition using one or more network application services and includes such other services as may be prescribed;

(35) "wireless equipment" means any equipment in use or capable of use in wireless communication and includes any article or apparatus as may be prescribed;

(36) "wireless communication" means any communication without the use of wire or cable.

CHAPTER II

REGULATION OF USE OF SPECTRUM, COMMUNICATION SERVICES, NETWORK INFRASTRUCTURE FACILITIES AND WIRELESS EQUIPMENT

Prohibition of use of Spectrum without assignment.

Provision of services, etc.

3. No person shall use any part of the spectrum without assignment from the Central Government or the Commission under this Act.

4. (1) No person other than a public service broadcaster shall—

(a) own or provide any network infrastructure facility, or

(b) provide any networking service or any network application service or any value added network application service or any content application service,

without a license or registration:

Provided that all facilities and services exempted from licensing or registration immediately before the commencement of this Act shall continue to be so exempt under this Act, until otherwise notified by the Central Government.

(2) The Central Government may, by notification, exempt any—

(a) person or class of persons; or

(b) facility or service,

from the provisions of this section.

Prohibition of possession of wireless equipment without a license.

5. (1) No person shall possess any wireless equipment without obtaining a license in accordance with the provisions of this Act:

Provided that the Central Government may, by notification, exempt in the public interest any person or class of persons or any wireless equipment or class or category of wireless equipments from the provisions of this section.

(2) Nothing contained in sub-section (1) shall apply to—

(a) any person or equipment licensed under any law for the time being in force immediately before the commencement of this Act; or

(b) any person or equipment exempted from licensing immediately before the commencement of this Act,

until otherwise notified by the Central Government.

CHAPTER III

COMMUNICATIONS COMMISSION OF INDIA

6. (1) With effect from such date as the Central Government may, by notification, appoint in this behalf, there shall be established for the purposes of this Act, a Commission to be known as the Communications Commission of India and the head office of the Commission shall be located at Delhi with regional offices at Kolkata, Chennai and Mumbai.

Establishment of Commission.

(2) The Commission shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(3) The Commission shall consist of the following Members, namely:—

(a) a Chairperson;

(b) not more than ten persons to be appointed as Members; and

(c) the Spectrum Manager as an *ex officio* Member.

(4) The Chairperson and not less than six Members other than the *ex officio* Member, shall be whole-time Members and the remaining shall be part-time Members.

7. (1) The Members (except the *ex officio* Member) shall be appointed by the Central Government, by notification, from amongst persons recommended by a search committee as may be prescribed.

Appointment of Chairperson and Members.

(2) One-half of the Members shall be appointed from amongst persons of eminence in the fields of literature, performing arts, media, culture, education, films and from persons prominent in social and consumer activities.

(3) One-half of the Members shall be appointed from amongst persons of eminence in specialised fields such as telecommunications, broadcasting technology, information technology, finance, management and administration, or law.

(4) The Chairperson shall be appointed by the Central Government, by notification, on the recommendation of the search committee referred to in sub-section (1) from amongst persons of eminence in one or more fields enumerated in sub-sections (2) and (3).

(5) Before appointing a person as Chairperson or other Member, the Central Government shall satisfy itself that the person does not have any such financial or other interests as are likely to affect prejudicially his functions as such Member.

(6) A person, who is in the service of Government, shall have to retire or resign from service before entering the office of Chairperson or whole-time Member.

8. (1) The Chairperson and a whole-time Member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier:

Term of office of Chairperson and Members.

Provided that the Chairperson or the whole-time Member shall not be eligible for re-appointment.

(2) The tenure of part-time Members shall be such as may be prescribed.

(3) The Chairperson shall have powers of general superintendence and direction in the conduct of the affairs of the Commission and shall, in addition to presiding over the meetings of the Commission, exercise and discharge such powers and functions of the Commission as may be assigned to the Chairperson by the Commission.

(4) The Chairperson or other Member may resign his office by giving notice thereof in writing to the Central Government and on such resignation being accepted, the Chairperson or such other Member shall be deemed to have vacated his office.

Removal from
office of
Chairperson and
other Members.

9. The Central Government may remove from office any Member, who—

(a) has been adjudged an insolvent; or

(b) has been convicted of any offence, which in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as Chairperson or other Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that no such Member shall be removed from his office under clause (d) or clause (e) unless he has been given a reasonable opportunity of being heard in the matter.

Salary and
allowances of
Chairperson and
other Members.

10. The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or other Member shall be varied to his disadvantage after appointment.

Vacancy or defect
not to invalidate
proceedings.

11. No act or proceeding of the Commission shall be invalidated merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Commission; or

(b) any defect in the appointment of a person acting as a Member; or

(c) any irregularity in the procedure of the Commission not affecting the merits of the case.

Functions of
regional offices.

12. The regional offices of the Commission at Kolkata, Chennai and Mumbai shall perform such functions as may be determined by regulations.

Meetings of
Commission.

13. (1) The Commission shall meet at such times and places and shall observe such procedure in regard to the transaction of business at its meetings as may be provided by regulations:

(2) A Member, other than the Chairperson, shall be deemed to have vacated his office if he absents himself for three consecutive meetings of the Commission without the leave of the Chairperson.

(3) The Chairperson or, if he is unable to attend a meeting of the Commission, any other Member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any other Member

chosen by the Members present from amongst themselves shall preside at the meeting of the Commission.

5 of 1908. 14. (1) The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:— Power of Commission to regulate its procedure.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

1 of 1872. (e) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document, from any office;

(f) dismissing an application for default or deciding it *ex parte*;

(g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;

(h) reviewing its decisions;

(i) granting interim relief; and

(j) any other matter which may be prescribed.

45 of 1860. (2) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

2 of 1974.

5 of 1908. (3) The Commission shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Commission shall have powers to regulate its own procedure including the places at which it shall conduct its business.

15. (1) The Secretary-General shall be appointed by the Commission and he shall be its chief executive officer and shall exercise such powers and discharge such functions as determined by regulations.

Secretary-General of the Commission.

(2) For the purposes of sub-section (1), the Commission may seek from the Central Government a panel of not less than three officers who are eligible to be, or are of the rank of, the Secretary to the Government of India for being appointed as the Secretary-General.

(3) The terms and conditions of service of the Secretary-General shall be such as may be prescribed.

16. (1) The Commission shall set up a Panel from amongst Members appointed under sub-section (2) of section 7 to deal with matters in relation to the content in content application services, and the Chairperson shall preside over meetings of the Panel:

Setting up of Panel, distribution of business, etc.

Provided that wherever necessary the Chairperson may place before the Commission any issue relating to the matters referred to in this section.

(2) Except for the power to make regulations, the Commission may, by general or special order, make provisions for the distribution of its business amongst Members as may be considered appropriate and necessary.

(3) For the discharge of its functions under this Act, the Commission may, if it considers necessary, set up bureaux or divisional organisations on the basis of its principal workload operations and subject to the provisions of section 53, such bureaux or divisional organisations shall be provided with such officers and other employees as are necessary to perform their functions.

(4) The Commission may, by order in writing, authorise any District Magistrate or Sub-Divisional Magistrate in any area or any other officer of the Central Government or State Government or Union territory Administration to implement and ensure compliance of its directions and orders; and when so directed or authorised, such Magistrate or officer shall be bound to implement and carry out such directions and orders.

CHAPTER IV

OBJECTIVES OF THE COMMISSION

Objectives and
guiding principles.

17. The Commission, while exercising its functions, shall strive to achieve the following objectives and guiding principles governing the administration of this Act, namely:—

(i) that the communication sector is developed in a competitive environment and in consumer interest;

(ii) that communication services are made available at affordable cost to all, especially uncovered areas including the rural, remote, hilly and tribal areas;

(iii) that there is increasing access to information for greater empowerment of citizens and towards economic development;

(iv) that quality, plurality, diversity and choice of services are promoted;

(v) that a modern and effective communication infrastructure is established taking into account the convergence of information technology, media, telecommunication and consumer electronics;

(vi) that defence and security interests of the country are fully protected;

(vii) that introduction of new technologies, investment in services and infrastructure and maximisation of communication facilities and services (including telephone density) are encouraged;

(viii) that equitable, non-discriminatory interconnection across various networks are promoted;

(ix) that licensing and registration criteria are transparent and made known to the public;

(x) that an open licensing policy allowing any number of new entrants (except in specific cases constrained by limited resources such as the spectrum) is promoted; and

(xi) that the principle of a level playing field for all operators, including existing operators on the date of commencement of this Act, is promoted, so as to serve consumer interest.

CHAPTER V

POWERS, DUTIES AND FUNCTIONS OF THE COMMISSION

18. (1) It shall be the duty of the Commission to facilitate and regulate all matters relating to carriage and content of communications.

Powers, duties and functions of the Commission.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Commission shall—

(i) carry out management, planning and monitoring of the spectrum for non-strategic or commercial usages subject to the provisions of section 24;

(ii) grant license or registration for purposes of this Act, and determine and enforce license or registration conditions and determine fees, including fees for usage of spectrum, wherever required;

(iii) determine appropriate tariffs and rates for services, wherever considered necessary and keeping in view the objectives and guiding principles in this Act;

(iv) ensure that the grant of license or registration shall not result in eliminating competition or in one or more service providers becoming dominant to the detriment of other service providers or consumers;

(v) promote competition and efficiency in the operation of communication services and network infrastructure facilities;

(vi) formulate and determine conditions for fair, equitable and non-discriminatory access to a network infrastructure facility or networking service and such other matters as may be prescribed;

(vii) take such measures as may be prescribed to protect consumer interests and to promote and enforce Universal Service Obligations;

(viii) formulate and lay down programme and advertising codes in respect of content application services;

(ix) formulate and lay down commercial codes in respect of communication services and network infrastructure facilities;

(x) take steps to regulate or curtail the harmful and illegal content on the internet and other communication services;

(xi) formulate and lay down codes and technical standards and norms to ensure, in a technology neutral manner, the quality and interoperability of services and network infrastructure facilities, including equipment;

(xii) carry out any study and publish findings on matters of importance to the consumers, service providers and the communications industry;

(xiii) institutionalise appropriate mechanisms and interact on a continual basis with all sectors of industry and consumers, so as to facilitate and promote the objectives and guiding principles of this Act to encourage self regulatory codes and standards;

(xiv) report and make recommendations either *suo motu* or on such matters as may be referred to it by the Central Government; and

(xv) perform all or any functions in furtherance of the objectives and guiding principles of this Act, or such other matters as may be prescribed.

(3) The Commission shall ensure transparency while exercising its powers and discharging its functions.

Power to make recommendations in certain cases.

19. The Commission may at any time make appropriate recommendations to the Central Government with regard to any particular practice that impinges upon or adversely affects the interests of the society, sovereignty and integrity of India, friendly relations with foreign States, public order, decency or morality.

Codes and standards.

20. The Commission shall, by regulations, specify programme codes and standards which may include, *inter alia*, practices—

(i) to ensure that nothing is contained in any programme, which is prejudicial to the interests of the sovereignty and integrity of India, security, friendly relations with foreign States, public order or which may constitute contempt of court, defamation or incitement to an offence;

(ii) to ensure fairness and impartiality in presentation of news and other programme;

(iii) to ensure emphasis on promotion of Indian culture, values of national integration, religious and communal harmony, and a scientific temper;

(iv) to ensure in all programme, decency in portrayal of women, and restraint in portrayal of violence and sexual conduct;

(v) to enhance general standards of good taste, decency and morality;

(vi) to ensure avoidance of offence to religious views and belief; and

(vii) to be followed in connection with the prevention of unjust and unfair treatment in any programme, and unwarranted infringement of privacy in, or in connection with, obtaining of material included in such programme.

Hearing of complaints and resolution of disputes by the Commission.

21. (1) The Commission shall—

(a) decide any dispute or matter—

(i) between two or more service providers on issues relating to spectrum interference, interconnectivity, denial of fair access and practices restrictive of fair competition; or

(ii) between one or more service providers and a group of consumers; or

(iii) arising out of enforcement of any provision of this Act;

(b) hear and determine any complaint from any person regarding contravention of the provisions of this Act, or the rules, regulations or orders made thereunder including contraventions relating to any formulated codes and technical standards, and of other terms and conditions subject to which any license or registration was granted; and if necessary, refer the matter for adjudication to the Adjudicating Officer under Chapter X.

(2) For the purposes of sub-section (1), the Commission shall pass such orders and issue such directions as it deems fit.

(3) The Commission shall endeavour to decide disputes and complaints referred to in sub-section (1) as expeditiously as possible.

22. (1) The Commission shall follow such policy directives as may be communicated to it in writing by the Central Government from time to time and such directives may include the procedure and the mode in which any services are to be licensed or registered, whether by way of auction in case of granting license, or in any other form.

Directives by the
Central
Government.

(2) In framing the policy directives, the Central Government shall take into account the objectives and guiding principles governing the administration of this Act.

(3) The decision of the Central Government whether a question is one of policy or not shall be final.

(4) The Commission may request the Central Government, by means of a written communication, for a review of any policy directive, and if any such request is made, the Central Government shall respond with reasons in writing to such request with all expeditious despatch.

CHAPTER VI

FREQUENCY SPECTRUM MANAGEMENT

23. (1) The Central Government shall be responsible for co-ordination with international agencies in respect of matters relating to spectrum management and also for allocation of available spectrum for strategic and non-strategic or commercial purposes.

Spectrum
Management
Committee.

(2) For the purposes of discharging the responsibility under sub-section (1), the Central Government shall establish, by notification, a Spectrum Management Committee with the Cabinet Secretary as its chairman and consisting of such other members as may be notified by it from time to time.

(3) The Central Government shall notify Wireless Advisor to the Government of India as Spectrum Manager, Government of India, to act as Member-Secretary of the Spectrum Management Committee.

(4) Subject to the general supervision and control of the Spectrum Management Committee, the Spectrum Manager shall, *inter alia*, perform the following functions, namely:-

(i) to co-ordinate with international agencies, matters relating to overall spectrum planning, use and its management;

(ii) to carry out spectrum planning, and assign frequencies to the Central Government and to State Governments to meet their vital needs, including those of defence, national security and of the public service broadcaster;

(iii) to allocate frequencies or band of frequencies including frequencies which are to be assigned by the Commission; and reassignment of frequencies from time to time;

(iv) to review constantly and to make available as much spectrum as possible for assignment by the Commission, in particular by optimising usages;

(v) monitoring as appropriate, in consultation with the Commission, the efficiency of the utilisation of the spectrum by all users including investigation and resolution of spectrum interference; and

(vi) after meeting the requirements of the Central Government and of State Governments for fulfilling their vital needs including those of

defence, national security and public service broadcaster, the Spectrum Manager shall make the spectrum available, to the maximum extent possible, for assignment by the Commission, both in the shared as well as in the exclusive bands.

(5) Subject to the general supervision and control of the Spectrum Management Committee, the Spectrum Manager shall assign frequencies on payment of such fee as may be prescribed.

Assignment of spectrum.

24. (1) The Commission shall be responsible for assignment of the non-strategic and commercial spectrum to various users:

Provided that the Commission shall assign such frequencies in case these are not exclusively allocated to it, only with the prior approval of the Spectrum Management Committee.

(2) Whenever the Commission seeks allocation of additional spectrum for assignment, including in the shared bands, a process for mutual consultation between the Commission and the Spectrum Manager shall be initiated in such manner and within a time frame as may be prescribed.

Commission to notify schemes for assignment of spectrum.

25. (1) Before assigning any part of spectrum, the Commission shall prepare and notify from time to time one or more schemes or plans for such assignment, after such public hearing as it may consider appropriate.

(2) The Central Government may, by notification, determine the class or classes of persons or services for preferential assignment of any frequency or spectrum by the Commission.

CHAPTER VII

LICENSE OR REGISTRATION

License or registration of service providers.

26. (1) Having regard to the necessity of serving the public interest, ensuring competition and prevention of monopoly in the provision of network infrastructure facilities and communication services, the Commission may, by regulations specify—

- (i) eligibility conditions for granting of licenses or registrations;
- (ii) restrictions regarding ownership and control of the media;
- (iii) restrictions on the number of licenses or extent of accumulation of interest in such licenses by a person; and
- (iv) such other conditions as may be considered necessary from time to time.

(2) (a) The Commission may determine by regulations, the obligations, conditions, restrictions, tariffs and rates subject to which a service provider shall provide facilities and services referred to in sub-section (1).

(b) The Commission may, by regulations, determine the conditions subject to which a license or registration may be granted or transferred and where a license or registration is transferred, the transferee shall be deemed as licensee or grantees, as the case may be, for the purposes of this Act.

(3) Subject to the provisions of sub-section (1), the Commission may grant license or registration in such manner, and within such time, subject to such terms and conditions, on payment of such fee and after following such procedure as may be determined by regulations:

Provided that the fee for registration shall not exceed thirty thousand rupees.

(4) The Commission shall notify, from time to time, one or more schemes or plans for licensing or registration containing such details as may be specified by regulations:

Provided that the Commission shall, before finalising such schemes or plans, consult the Central Government in order to ensure that the defence and security interests of India are fully protected.

(5) Any scheme or plan referred to in sub-section (4) may provide for eligibility conditions, number and scope of licenses and registrations and such other matters as the Commission may consider necessary.

(6) The Commission may grant license to any person—

(a) to provide or own network infrastructure facilities.

Explanation.—For the purposes of this clause, network infrastructure facilities shall include earth stations, cable infrastructure, wireless equipments, towers, posts, ducts and pits used in conjunction with other communication infrastructure, and distribution facilities including facilities for broadcasting distribution;

(b) to provide networking services.

Explanation.—For the purposes of this clause, networking services shall include band-width services, fixed links and mobile links;

(c) to provide network application services.

Explanation.—For the purposes of this clause, network application services shall include public switched telephony, public cellular telephony, global mobile personal communication by satellite, internet protocol telephony, radio paging services, public mobile radio trunking services, public switched data services and broadcasting (radio or television service excluding continued);

(d) to provide content application services.

Explanation.—For the purposes of this clause, content application services shall include satellite broadcasting, subscription broadcasting, terrestrial free to air television broadcasting and terrestrial radio broadcasting;

(e) to provide value added network application services such as internet services and unified messaging services.

Explanation.—For the removal of doubts, it is hereby declared that information technology enabled services such as call centres, electronic-commerce, tele-banking, tele-education, tele-trading, tele-medicine, videotex and video conferencing shall not be licensed under this Act.

(7) The Commission may, while granting a license for any of the categories under sub-section (6), confine or limit the scope of the facility or service to be provided by the licensee in each category of license, and also specify the conditions for providing that facility or service.

(8) The Commission may, while granting a license under sub-section (6), grant licenses either singly or jointly for one or more of the categories of facilities or services specified therein:

Provided that no license shall be granted under this sub-section, if it conflicts with the objectives and guiding principles set out under this Act particularly in relation to ensuring fair access and promotion of competition.

Explanation.—No license shall be required in respect of any person or class of persons, or any facility or service, which has been exempted under the proviso to clause (b) of sub-section (1) of section 4 unless specifically notified by the Central Government for the purposes of licensing under this Act.

Period and form of
license or
registration.

27. (1) A license or registration shall be granted for such period as may be specified by regulations.

(2) A license or registration, granted under this Act, shall be in such form and shall be subject to the payment of such fee as may be determined by regulations:

Provided that the fee for registration shall not exceed the amount referred to in the proviso to sub-section (3) of section 26:

Provided further that the Central Government may, by notification, in the public interest, exempt any person or class of persons from payment of the license fee or registration fee.

Duties of service
providers.

28. (1) Every service provider shall, wherever required or applicable,—

(i) give effect to Universal Service Obligations;

(ii) provide such life saving services as may be prescribed;

(iii) provide service to any person on demand within a reasonable period of time and on a non-discriminatory basis; and

(iv) follow the codes and standards laid down and specified by the Commission.

(2) Every service provider of a content application service shall, wherever required or applicable,—

(i) endeavour to provide a suitable proportion of programme of indigenous origin; and

(ii) ensure that no programme forming part of his services infringes any copyright.

(3) Without prejudice to the foregoing provisions of this Act, every service provider holding a license for providing of broadcasting services shall, amongst others,—

(i) provide a specified number and type of broadcasting services, including those of the public service broadcaster, in such manner, as may be prescribed;

(ii) include only licensed broadcasting service in his delivery package for the purposes of distribution; and

(iii) use not more than such number of channels as specified by regulations, out of the total channel capacity of the system, for providing his own programming.

Certain agreements
to be registered with
the Commission.

29. Every agreement, entered into or made by any service provider or infrastructure facilities provider, falling under one or more of the following classes shall, within sixty days from the making of such agreement, be registered with the Commission, namely:—

(a) shareholders or promoters agreements ;

(b) interconnectivity agreements; and

(c) such other agreements as may be specified by regulations.

CHAPTER VIII

LICENSING FOR POSSESSION OF WIRELESS EQUIPMENT

30. (1) Subject to the provisions of sub-section (1) of section 5, any person who intends to possess any wireless equipment shall make an application to the Commission for the grant of a license. License for wireless equipment.

(2) Every application shall be in such form and shall be accompanied by such fee as may be determined by regulations.

(3) The Commission shall, on receipt of an application under sub-section (1), after making such inquiries as it deems fit, grant the license or reject the application:

Provided that no application shall be rejected unless an opportunity of being heard is given to the applicant:

Provided further that no application for a license shall be rejected except on the grounds of security of India or part thereof, public order or public interest.

(4) Every license granted under this section shall be subject to such conditions and restrictions as may be determined by regulations.

CHAPTER IX

SPECIAL PROVISION IN RESPECT OF CERTAIN SERVICES

31. (1) For the purpose of ensuring the widest availability of viewing in India of a national or international event of general public interest to be held in India, the Central Government shall notify the same well in advance. Provision for live broadcasting of certain events.

(2) The national or international event of general public interest notified under sub-section (1) shall have to be carried on the network of a public service broadcaster as well.

(3) In order to strive towards providing a level playing field for bidders for broadcasting rights, or persons interested in receiving broadcasting rights for events, notified under sub-section (1), the Commission shall determine, well in advance of such event, the principles and terms for the access to the network of public service broadcaster.

CHAPTER X

BREACH OF TERMS AND CONDITIONS OF LICENSE OR REGISTRATION, CIVIL LIABILITY AND ADJUDICATION

32. (1) In case of breach of any of the terms of the license or registration or failure to comply with any decision, direction or order of the Commission, it may, after providing an opportunity to the party concerned of being heard, do any one or more of the following, namely:— Breach of terms and conditions of license, etc.

(a) direct the licensee or grantee to do or abstain from doing any act or thing to prevent such breach or for such compliance;

(b) suspend the license or registration for a specified period;

(c) curtail the period of the license or registration;

(d) revoke the license or registration; and

(e) initiate adjudication proceedings under this Chapter.

(2) If the Commission has reason to believe that the terms and conditions of a license or registration for providing a network infra-structure facility or communication service under this Act have been or are being breached, the Commission may direct or order the seizure of the equipment being used for provision of such facility or service, and for this purpose the Commission may, by order in writing, authorise any District Magistrate or Sub-Divisional Magistrate in any area, or any other officer of the Central Government or a State Government or Union territory Administration, to implement and ensure compliance of its directions and orders; and when so authorised, such Magistrate or officer shall be bound to carry out the directions and orders of the Commission.

(3) Any person aggrieved by the seizure under sub-section (2) may prefer an appeal to the Appellate Tribunal within thirty days of the seizure and the Appellate Tribunal may pass such orders, as expeditiously as possible, as to the disposal of the property so seized as it may deem fit:

Provided that no such equipment shall be retained by the Commission or the authorised officer for a period exceeding forty-five days from the date of its seizure, unless the Appellate Tribunal, on the report made by the authorised officer, approves such retention for a longer period.

Civil liability for breach of terms and conditions of license, etc.

33. If any licensee or grantee commits breach of, or fails to comply with, any terms and conditions subject to which a license or registration, as the case may be, was granted or fails to comply with any rule, regulation or order made under this Act, the licensee or grantee shall be liable to a civil liability under this Chapter.

Civil liability for contravention of the provisions relating to transmission, etc.

34. If any person transmits or distributes any communication or performs any service incidental thereto, by the use of a network infrastructure facility, communication service or wireless equipment which is required to be licensed or registered under this Act and not so licensed or registered, as the case may be, or has been established or maintained or operated in contravention of the provisions of this Act or any rule or regulation made thereunder, such person shall be liable to a civil liability under this Chapter.

Civil liability for delivery of content through facilities, services or equipments not licensed or registered.

35. If any person delivers any content for transmission or accepts delivery of any content sent by the use of network infrastructure facility, communication service or wireless equipment knowing or having reason to believe that such facility, service or equipment has been established or has been maintained or operated without a license or registration or in contravention of the provisions of this Act or any rule or regulation made thereunder, such person shall be liable to a civil liability under this Chapter.

Civil liability for failure to register agreements.

36. If a service provider fails without reasonable excuse to register an agreement which is required to be registered as provided under section 29, he shall be liable to a civil liability under this Chapter.

Civil liability for failure to comply with the decision, etc., of the Commission.

37. If any person wilfully fails to comply with any decision, direction or order of the Commission, he shall be liable to civil liability under this Chapter.

Filing of complaint, reference for adjudication, etc.

38. (1) A complaint may be filed before the Commission alleging that a service provider or any other person has incurred a civil liability under this Chapter.

(2) Every complaint under sub-section (1), except a complaint under section 33, shall be filed within sixty days from the date on which any act or conduct constituting the contravention took place and shall be in such form as may be prescribed:

Provided that the Commission may entertain the complaint after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it, within that period.

(3) On receipt of a complaint under sub-section (1), if the Commission is of the opinion that there is a *prima facie* case for referring the matter for adjudication under this Chapter, it may refer the same to the Adjudicating Officer having jurisdiction in the matter for adjudication; in all other cases the Commission may summarily dispose of the complaint.

(4) Notwithstanding anything contained in this section, the Commission may at any time refer *suo motu* any contravention of any of the provisions of this Act or of any rule, regulation, direction or order made thereunder, to the Adjudicating Officer for adjudication in accordance with the provisions of this Chapter.

39. (1) For the purpose of adjudging whether any person has contravened any of the provisions of this Act, any rules, regulations, made thereunder or directions or orders issued under this Act is liable to a civil liability under this Chapter, the Commission shall, subject to the provisions of sub-section (3), appoint by general or special order, an officer of the Commission as Adjudicating Officer for holding an inquiry in the manner provided for herein and in the regulations.

Power to adjudicate.

(2) The Adjudicating Officer shall give the person referred to in sub-section (1), a reasonable opportunity for making a representation in the matter, and if, on inquiry, the Adjudicating Officer is satisfied that the person has committed any contravention, and is liable to a civil liability, then, such liability as may be determined, by order, shall be imposed by the Adjudicating Officer on such person:

Provided that where the Adjudicating Officer is satisfied that there has been no contravention, he may pass such order as he deems fit.

(3) No person shall be appointed as an Adjudicating Officer unless he possesses such experience as may be prescribed.

(4) Where more than one Adjudicating Officers are appointed, the Commission shall specify, by order, the matters and places with respect to which such officers shall exercise their jurisdiction.

(5) For the purpose of discharging his powers and functions, every Adjudicating Officer shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document, from any office;

(e) issuing commission for the examination of witnesses or for production of documents;

(f) dismissing an application for default or deciding it *ex parte*;

(g) setting aside any order of dismissal of any application for default or any order passed by him *ex parte*;

5 of 1908.

1 of 1872.

- (h) reviewing his decisions;
- (i) granting interim relief; and
- (j) any other matter which may be prescribed.

(6) The Adjudicating Officer shall endeavour to decide disputes and complaints referred to him as expeditiously as possible.

(7) Any proceeding before the Adjudicating Officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code and the Adjudicating Officer shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

45 of 1860.

2 of 1974.

Civil liability for wilfully or otherwise damaging network infrastructure facility and causing interruption.

40. (1) If any person damages, displaces or destroys any cable or any part of the network infrastructure facility laid, established or placed in accordance with the provisions of this Act, or if the communication service by reason of the damage or displacement caused by him is interrupted, such person shall be liable,—

(a) where the act is wilful and deliberate, to a civil liability which may extend to five crore rupees and where the actual loss or damage caused is more than five crore rupees, then, a civil liability up to the extent of the damage;

(b) where the act is not wilful or deliberate, to a civil liability not exceeding the actual loss or damage caused.

(2) Out of the civil liabilities imposed under sub-section (1), such sum as may be determined by the Adjudicating Officer shall be payable to the licensee or the grantee, as the case may be, as reasonable compensation for damage suffered.

Civil liability for not taking consent for use of private land.

41. If any person contravenes the provision of sub-section (2) of section 63, he shall be liable to a civil liability as determined by the Adjudicating Officer under this Chapter.

Factors to be taken into account by the Adjudicating Officer.

42. (1) Any civil liability which may be imposed under this Chapter shall not exceed fifty crore rupees.

(2) The Adjudicating Officer shall, while adjudging the quantum of civil liability, under this Chapter, have due regard to the provisions of this Act, and also to the following factors, namely:—

- (a) the amount of revenue loss to the Government;
- (b) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (c) the amount of loss caused to any person as a result of the default;
- (d) the repetitive nature of the default; and
- (e) the amount adjudged shall be such as may act as a deterrent even though no financial loss has been caused by such contravention.

CHAPTER XI

COMMUNICATIONS APPELLATE TRIBUNAL

Establishment of Appellate Tribunal.

43. (1) The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Communications Appellate Tribunal, to

exercise the jurisdiction, powers and authority conferred on it by or under this Act.

(2) Any person aggrieved by any decision or order of the Commission may prefer an appeal to the Appellate Tribunal.

(3) (a) Every appeal under sub-section (2) shall be preferred within a period of sixty days from the date on which a copy of the decision or order made by the Commission is received by the person aggrieved and the appeal shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed.

(b) Any person aggrieved by an order of civil liability imposed by the Adjudicating Officer may prefer an appeal to the Appellate Tribunal within sixty days from the date on which such order is received and the appeal shall be in such form, verified in such manner and accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal under clause (a) or clause (b) after expiry of the said period of sixty days, if it is satisfied that there was sufficient cause for not filing the same within that period.

(4) On receipt of an appeal under sub-section (2) or sub-section (3), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(5) The Appellate Tribunal shall send a copy of every order made by it to each of the parties to the appeal and to the Commission or the Adjudicating Officer, as the case may be.

(6) The Appellate Tribunal shall endeavour to deal with and dispose of every appeal preferred under sub-section (2) or sub-section (3) as expeditiously as possible; and all parties appearing before the Appellate Tribunal shall actively assist in ensuring that the appeal is disposed of not later than ninety days from the date of filing of the appeal.

(7) The Appellate Tribunal may, on its own motion or otherwise for the purpose of examining the legality, propriety or correctness of any order or decision of the Commission or the Adjudicating Officer, call for relevant records and make such orders as it thinks fit:

Provided that the power under this sub-section shall not be invoked after the expiry of three months from the date of such order or decision.

44. (1) The Appellate Tribunal shall consist of a chairperson and not more than six members to be appointed, by notification, by the Central Government.

**Composition of
Appellate Tribunal.**

(2) The appointment of the chairperson of the Appellate Tribunal shall be made by the Central Government in consultation with the Chief Justice of India.

(3) The appointment of members of the Appellate Tribunal shall be from amongst persons recommended by the search committee as may be prescribed.

(4) Subject to the provisions of this Act —

(a) the jurisdiction of the Appellate Tribunal may be exercised by benches thereof;

(b) a bench may be constituted by the chairperson of the Appellate Tribunal consisting of two or more members thereof as he may deem fit:

Provided that every bench shall be presided over by a judicial member.

Explanation.—For the purposes of this section “judicial member” means any member of the Appellate Tribunal who has been a Judge of a High Court;

(c) the benches of the Appellate Tribunal shall ordinarily sit at Delhi and also at such other places as the Central Government may notify, in consultation with the chairperson of the Appellate Tribunal;

(d) the Central Government shall, on the recommendation of the Appellate Tribunal, notify the areas in relation to which each bench of the Appellate Tribunal may exercise jurisdiction.

(5) The chairperson of the Appellate Tribunal may, as the exigencies of business may require, request a member of the Appellate Tribunal sitting on one bench of the Appellate Tribunal to sit on another bench thereof.

(6) If at any stage it appears to the chairperson or a bench of the Appellate Tribunal that the case or matter is of such a nature that it ought to be heard by a bench consisting of more than two members of the Appellate Tribunal, the case or matter may be transferred by the chairperson to a bench of more than two members.

Qualification, salary and allowances, etc., of the chairperson and members of the Appellate Tribunal.

45. (1) A person shall not be qualified for appointment as the chairperson or a member of the Appellate Tribunal unless,—

(a) in the case of the chairperson, he is, or has been, a Judge of the Supreme Court;

(b) in the case of a member, he is, or has been, a Judge of a High Court, or has held the post of Secretary to the Government of India or any equivalent post in the Central Government or a State Government for a period of not less than two years, or he is a person who is proficient in any of the fields specified in sub-sections (2) and (3) of section 7.

(2) The chairperson and every member of the Appellate Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office:

Provided that no chairperson or member shall hold office as such after he has attained,—

(i) in the case of the chairperson, the age of seventy years;

(ii) in the case of any other member, the age of sixty-five years.

(3) The salary and allowances payable to, and the other terms and conditions of service of, the chairperson and members of the Appellate Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the chairperson or a member of the Appellate Tribunal shall be varied to his disadvantage after appointment.

(4) (a) If, for reason other than temporary absence, any vacancy occurs in the office of the chairperson or a member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy.

(b) When the chairperson of the Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, any member of the Appellate Tribunal, as authorised so to do by the Central Government, shall discharge the functions of the chairperson until the day on which the chairperson resumes charge of his functions.

(5) Before appointing any person as chairperson or member of the Appellate Tribunal, the Central Government shall satisfy itself that the person does not have any such financial or other interests as are likely to affect prejudicially his functions as such chairperson or member.

(6) A person, who is in the service of Government, shall have to retire or resign from service before entering the office of chairperson or member of the Appellate Tribunal.

46. (1) The chairperson or a member of the Appellate Tribunal may resign his office by giving notice thereof in writing to the Central Government and on such resignation being accepted, the chairperson or the member shall be deemed to have vacated his office.

Resignation and removal.

(2) The Central Government may remove from office, the chairperson or a member of the Appellate Tribunal, who—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as the chairperson or a member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the chairperson or a member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(3) Notwithstanding anything contained in sub-section (2), the chairperson or a member of the Appellate Tribunal shall not be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as may be specified in this behalf by the Supreme Court, reported that the chairperson or the member ought on such ground or grounds be removed.

(4) The Central Government may suspend from office, the chairperson or a member of the Appellate Tribunal in respect of whom a reference has been made to the Supreme Court under sub-section (2), until the Central Government has passed an order on receipt of the report of the Supreme Court on such reference.

47. (1) The chairperson of the Appellate Tribunal may, from time to time, by order, make provisions as to the distribution of the business of the Appellate Tribunal amongst the benches of the Appellate Tribunal and also provide for the matters which may be dealt with by each bench thereof.

Distribution of business amongst benches, etc.

(2) On the application of any of the parties and after notice to the parties, and after hearing such of them as may desire to be heard, or *suo motu* without notice, the chairperson of the Appellate Tribunal may transfer any case pending before one bench of the Appellate Tribunal for disposal, to any other bench thereof.

(3) If the members of a bench of the Appellate Tribunal consisting of two members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the chairperson of the Appellate Tribunal who shall hear the point or points, and thereafter such point or points shall be decided according to the opinion of the majority who have heard the case, including those who first heard it.

Procedure and powers of Appellate Tribunal.

48. (1) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:— 5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office; 1 of 1872.

(e) issuing commissions for the examination of witnesses or documents;

(f) dismissing an application for default or deciding it *ex parte*;

(g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;

(h) reviewing its decisions;

(i) granting interim relief; and

(j) any other matter which may be prescribed.

(2) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure. 5 of 1908.

(3) Every proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. 45 of 1860.
2 of 1974.

Right of applicant to take assistance of legal practitioner, etc.

49. An applicant or appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its accredited officers to present his or its case before the Appellate Tribunal.

Explanation.—For the purposes of this section,—

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; 38 of 1949.

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; 56 of 1980.

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; 23 of 1959.

(d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader.

5 of 1908.

50. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law for the time being in force, an appeal shall lie against any order, not being an interlocutory order, passed by the Appellate Tribunal to the Supreme Court on one or more of the grounds specified in section 100 of that Code.

Appeals to Supreme Court.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

(3) Every appeal under this section shall be preferred within a period of ninety days from the date of the decision or order appealed against:

Provided that the Supreme Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

51. (1) An order passed by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of a civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

Execution of orders.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

Explanation.—For the purposes of this section, the expression “civil court having local jurisdiction” shall mean the civil court within whose local limits of jurisdiction, the licensee, grantee or judgment debtor, as the case may be, resides or has a place of office or business and also within whose jurisdiction any property belonging to the licensee, grantee or judgment debtor is located.

52. If any person wilfully fails to comply with any decision, direction or order of the Appellate Tribunal, such person shall be liable to a penalty to be imposed by the order of the Appellate Tribunal which may extend to five crore rupees:

Penalty for failure to comply with the orders, etc., of Appellate Tribunal.

Provided that no such penalty shall be imposed without giving an opportunity of being heard to the party concerned.

CHAPTER XII

OFFICERS AND EMPLOYEES OF THE COMMISSION AND THE APPELLATE TRIBUNAL

53. (1) The Commission or Appellate Tribunal, as the case may be, shall appoint such officers and other employees as the Commission or Appellate Tribunal, as the case may be, considers necessary for the efficient discharge of its functions under this Act subject to such conditions as may be prescribed.

Officers and employees of Commission and Appellate Tribunal.

(2) The salaries and allowances payable to and the terms and conditions of service of the officers and employees of the Commission and of the Appellate Tribunal shall be such as may be prescribed;

(3) The officers and employees of the Commission shall discharge their functions under the general superintendence and control of the Chairperson of the Commission and the officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence and control of the chairperson of the Appellate Tribunal.

CHAPTER XIII

FINANCE, ACCOUNTS AND AUDIT

Proceeds of license
fee, etc.

54. (1) Subject to the provisions of sub-section (2) of section 40 and sub-section (2), the proceeds of the license fee, fee paid under sub-section (5) of section 23, registration fee, amount received by imposition of civil liabilities imposed under this Act and amount of penalties imposed by the Appellate Tribunal shall be credited to the Consolidated Fund of India.

(2) Such portion or percentage of the license fee as may be attributable to the Universal Service Obligation as may be prescribed shall be credited to a separate fund to be called the Universal Service Obligation Fund in the public account of India.

Communications
Commission and
Appellate Tribunal
Funds.

55. (1) There shall be constituted two separate funds to be called the Communications Commission Fund and the Appellate Tribunal Fund, and there shall be credited to these funds sums of money paid or grants made by the Central Government to be utilised for the purposes of this Act.

(2) Subject to the provisions of sub-section (1) of section 54, fee receivable by the Commission shall be credited to the Communications Commission Fund, and fee receivable by the Appellate Tribunal shall be credited to the Appellate Tribunal Fund.

Grants and
application of
Funds.

56. After due appropriation made by Parliament by law, the Central Government shall credit to the funds referred to in sub-section (1) of section 55 by way of grant, separately for the Commission and for the Appellate Tribunal, adequate sums of money for being utilised for the purposes of this Act, and for meeting the salaries and allowances payable to the Chairperson and Members of the Commission and chairperson and members of the Appellate Tribunal and the administrative expenses including the salaries and allowances payable to, or in respect of, officers and other employees of the Commission and of the Appellate Tribunal, as the case may be.

Accounts and audit.

57. (1) The Commission as also the Appellate Tribunal shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and manner as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Commission as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall form part of the annual report of the Commission referred to in sub-section (1) of section 58.

(3) The accounts of the Appellate Tribunal as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government, and that Government shall cause the same to be laid before each House of Parliament.

Annual report.

58. (1) The Commission shall, after the end of each financial year, furnish to the Central Government an annual report on its activities during the preceding financial year and containing such information relating to the proceedings and policy as may be prescribed, and such report shall also contain therein the statement of annual accounts of the Commission.

(2) The Central Government shall cause such report to be laid before each House of Parliament.

CHAPTER XIV

RIGHT OF WAY FOR LAYING CABLES AND ERECTION OF POSTS

59. (1) Subject to the provisions of this Act, any person entitled under the provisions of this Act for providing services or facilities (hereinafter referred to as facility provider) may from time to time lay and establish cables and erect posts under, over, along, across, in or upon any immovable property vested in or under the control or management of a public authority.

Rights of facility providers in public land.

(2) Any public authority under whose control or management any immovable property is vested shall, on receipt of a request from a facility provider permit the facility provider to do all or any of the following acts, namely:—

(a) to place and maintain underground cables or posts; and

(b) to enter on the property, from time to time, in order to place, examine, repair, alter or remove such cables or posts.

(3) The permission under sub-section (2) shall be promptly given and shall not be unreasonably withheld or denied:

Provided that in case of an emergency the facility provider may at any time for the purpose of examining, repairing, altering or removing any cable or post enter upon the property for that purpose without obtaining such permission.

(4) The facility of right of way under this section for laying underground cables, and erecting posts, shall be available to all facility providers without discrimination and subject to the obligation of reinstatement or restoration of the property or payment of reinstatement or restoration charges in respect thereof at the option of the public authority.

(5) Where any shifting or alteration in position of the underground cable or post is required due to compulsive causes like widening of highways and construction of flyovers or bridges, the said facility provider shall shift or alter the same at his own cost within the period indicated by the concerned public authority.

(6) For the purposes of speedy clearance of requests for laying cables or erecting posts on any property vested in, or under the control or management of, any public authority, high powered committees, or other appropriate mechanisms shall be promptly set up by the Central Government or the State Government in the manner prescribed, and they shall in each State act as a single nodal agency to co-ordinate all activities in this regard; and the Central Government may provide appropriate guidelines in this behalf.

60. Any permission granted by a public authority under section 59 may be subject to such reasonable conditions as that authority thinks fit to impose as to the time or mode of execution of any work, or as to any other matter connected with or related to any work undertaken by the facility provider in exercise of those rights.

Right of public authority to grant permission.

61. When under the foregoing provisions of this Chapter, any cable or post has been placed by any facility provider under, over, along, across in or upon any property and the public authority having regard to circumstances which have arisen since the cable or post was so placed, considers it necessary and expedient that it should be removed or its position should be altered, it may require the concerned facility provider to remove it or alter its position, as the case may be, and it shall, then, be so removed or altered without any delay.

Provision for removal or alteration of cable or post.

Determination of disputes.

62. (1) If any dispute arises under this Chapter including refusal of permission by the public authority, the district court within whose local limits of jurisdiction the property concerned is situated shall on application determine the same.

(2) Every such determination shall be in accordance with the provisions of this Chapter and such determination shall be deemed to be a decree of the district court and be for all purposes treated as such.

(3) The provisions of the Code of Civil Procedure, 1908 shall apply to adjudication of all disputes under this section. 5 of 1908.

(4) Pending disposal of any application, the district court may pass such interim orders, preventive or mandatory, for the doing of any act under this Chapter on such terms and conditions as may be provided for in such order.

Use of private land by facility provider.

63. (1) A facility provider may make use of private land or premises for constructing or laying of cables or erecting posts only with the consent in writing of the owner of the land or premises, as the case may be:

Provided that where in the opinion of a facility provider such consent to the reasonable use of any land or premises is not forthcoming, such facility provider may, on an application to and with the approval of the Commission, take steps authorised by the Commission for use of the land or premises for constructing or laying cables or erecting posts on such terms as the Commission may deem fit.

(2) Where, immediately before the commencement of this Act, a facility provider has made use of private land or premises for constructing or laying of cables or erecting posts without consent of the owner of the land or the premises and despite owner's objection, the facility provider shall, within a period of six months from the date of commencement of this Act, obtain a written consent of the owner, and the proviso to sub-section (1) shall apply *mutatis mutandis* to this situation.

Power of Commission to issue order, regarding use of private land.

64. (1) The Commission may, by order, require any network infrastructure facility to be provided, constructed, installed, altered, moved, operated, used, repaired or maintained on any private land or premises or any system or method to be adopted by any person interested in, or affected by, the order, and at or within such time subject to such conditions as to compensation or otherwise and under such supervision as the Commission may determine to be just.

(2) The Commission may, by order, specify by whom, in what proportion and at or within what time the cost of doing anything required to be done under sub-section (1) shall be paid.

(3) Any order of the Commission under sub-section (1) or sub-section (2) shall be enforceable under Chapter X of this Act as if such order is the order referred to in section 37.

Right of a facility provider.

65. Nothing in this Chapter shall confer any right upon any facility provider other than that of a user for the purpose only of laying cables or erecting posts or maintaining them.

CHAPTER XV

INTERCEPTION OF COMMUNICATION AND PUNISHMENT FOR UNLAWFUL INTERCEPTION

Interception of communication and safeguards.

66. (1) Subject to the prescribed safeguards, the Central Government or a State Government or any officer specially authorised in this behalf by the Central Government or the State Government, on the occurrence of any public emergency

or in the interest of public safety, if satisfied that it is necessary or expedient so to do in the interests of the security, sovereignty and integrity of India, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, may direct—

(i) any agency of that Government to intercept any communication on any network facilities or services;

(ii) any service provider that any content brought for communication by, or communicated or received by, him shall not be communicated or shall be intercepted or detained or shall be disclosed to that Government or its agency authorised in this behalf.

(2) The service provider shall, when called upon by any agency which has been directed to carry out interception under sub-section (1), extend all facilities and technical assistance for interception of the content of communication.

(3) Any service provider, who fails to assist the agency referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to seven years.

(4) Save as otherwise provided under this section, any person, who intercepts any communication or causes any communication to be intercepted or discloses to any person any content of such communication, shall be punishable with imprisonment which may extend to five years or with fine which may extend to ten lakh rupees, and, for the second or subsequent offence, with imprisonment which may extend to five years, and with fine which may extend to fifty lakh rupees.

Explanation.—For the purposes of this section, “interception” means the aural or other acquisition of the content through the use of such devices or means as may be necessary for such acquisition.

67. Nothing in this Chapter shall affect the provisions of section 69 of the Information Technology Act, 2000.

Saving.

21 of 2000.

CHAPTER XVI

OFFENCES AND PUNISHMENT

68. (1) Save as otherwise provided in this Act, any person who, without a license, owns or provides any network infrastructure facility or provides any communication service or knowingly assists in the transmission or distribution of such service in any manner including—

Punishment for unlicensed services.

(a) collection of subscription for his principal; or

(b) issuing of advertisements to such service; or

(c) dealing in, or distribution of, equipment for decoding programme,

shall be punishable with imprisonment which may extend to five years, or with fine which may extend to five crore rupees, or with both, and, for the second or subsequent offence, with imprisonment which may extend to five years, or with fine which may extend to ten crore rupees, or with both.

(2) Any person, who without the permission of the service provider and with the intent to defraud, diverts any signal or decodes any content or deals in decoding equipment for such purpose, shall be punishable with imprisonment which may extend to five years and with fine which may extend to five crore rupees, or with both, and, for the second or subsequent offence, with imprisonment which may extend to five years, and with fine which may extend to ten crore rupees.

(3) Any person, who knowingly benefits from any unauthorised diversion or tampering with any communication service or network infrastructure facility with the knowledge that such service or facility is unauthorised or tampered, shall be punishable with imprisonment which may extend to two years, or with fine which may extend to two crore rupees, or with both.

(4) Any person, who abets or induces the making of any unauthorised diversion or tampering with any communication service or network infrastructure facility, shall be punishable with imprisonment which may extend to two years, or with fine which may extend to two crore rupees, or with both.

(5) Any person, who having been convicted of an offence under sub-section (3) or sub-section (4) is again convicted of an offence thereunder, shall be punishable with imprisonment which shall not be less than six months but which may extend to five years, and with fine which may extend to five crore rupees.

Punishment for possession of wireless equipment, etc., without license.

69. (1) Any person,—

(a) who possesses any wireless equipment in contravention of the provisions of section 5; or

(b) who uses a radio frequency which he is not authorised to use under this Act,

shall be punishable with imprisonment which may extend to three years, or with fine which may extend to two crore rupees, or with both.

Explanation.—For the purposes of this sub-section, “radio frequencies” means any frequency of electro-magnetic waves upto and including a frequency of 3000 giga hertz.

(2) When any person is convicted for an offence punishable under sub-section (1), all wireless equipments or any part thereof in respect of which the offence has been committed, shall be forfeited to the Central Government.

(3) Any wireless equipment which has not been claimed by any person shall vest in the Central Government.

(4) Any officer, authorised by the Central Government or the Commission in this behalf, may search any building, vehicle, vessel or place in which he has reason to believe that any wireless equipment in respect of which an offence punishable under sub-section (1) has been committed is kept or concealed, and take possession thereof.

Punishment for sending obscene or offensive messages.

70. Any person who sends, by means of a communication service or a network infrastructure facility,—

(a) any content that is grossly offensive or of an indecent, obscene or menacing character; or

(b) for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill-will, any content that he knows to be false or persistently makes use for that purpose of a communication service or a network infrastructure facility,

shall be punishable with imprisonment which may extend to three years, or with fine which may extend to two crore rupees, or with both.

Attempt to commit offences.

71. Whoever attempts to commit, or abets the commission of, any offence under sub-section (3) or sub-section (4) of section 66 or under this Chapter shall be punished with the punishment provided for that offence.

Offences by companies.

72. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

73. No court inferior to that of a Court of Session shall try any offence under this Act.

Offences triable by Court of Session.

2 of 1974.

74. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Act shall be cognizable.

Offences to be cognizable.

CHAPTER XVII

TRANSFER OF PROCEEDINGS

75. On the date of establishment of the Commission under sub-section (1) of section 6, all proceedings pending before the Telecom Regulatory Authority of India, established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997, shall be deemed to be pending before the Commission and shall be disposed of in accordance with the provisions of this Act.

24 of 1997.

Transfer of proceedings to Commission.

76. On the date of establishment of the Appellate Tribunal under sub-section (1) of section 43, all proceedings pending before the Telecom Disputes Settlement and Appellate Tribunal established under section 14 of the Telecom Regulatory Authority of India Act, 1997 shall stand transferred to the Appellate Tribunal which shall hear and dispose of such proceedings from the stage at which the proceedings were pending before the first-mentioned Tribunal, in accordance with the provisions of this Act.

24 of 1997.

Transfer of proceedings to Appellate Tribunal.

CHAPTER XVIII

MISCELLANEOUS

77. (1) In the event of war or any calamity of national magnitude, the Central Government may, by notification, for a limited period, in the public interest, take over the control and management of any communication service or any network infrastructure facility connected therewith, suspend its operation or entrust any agency of that Government to manage it in the manner directed by that Government for such period as provided for in the notification.

Taking over control and management of communication service or network infrastructure facility.

(2) If it appears necessary or expedient to do so, the Central Government may, in the public interest, at any time request the Commission to direct any licensee or grantee to—

(a) transmit in his broadcasting service specific announcements, in such manner as may be considered necessary by that Government;

(b) stop any broadcasting service which is prejudicial to the security, sovereignty and integrity of India, friendly relations with foreign States, or to public order, decency or morality, or communal harmony.

(3) On the issue of such directions by the Commission, it shall be the duty of the licensee or grantee to ensure compliance of such directions.

Obligations of
licensees and
grantees.

78. (1) Every licensee or grantee shall—

(a) commence operation of his service within such period as may be specified by the Commission;

(b) maintain such documentary records and transmission schedules as may be specified by the regulations; and

(c) allow inspection of such facilities and such documentary records and transmission schedules, as may be specified by the Commission, by any person authorised by the Commission in this behalf.

(2) The Commission may call for any information from a licensee or grantee including information necessary for ensuring transparency or for ascertaining the true ownership of the license or registration or the status of licensee or grantee.

(3) The Commission or any officer authorised in this behalf by the Commission shall have power to inspect and obtain information, wherever necessary, from programme producers, programme distributors and programme advertising agents.

(4) For effective enforcement of the terms and conditions of license or registration, the Commission or any officer authorised by the Commission for that purpose, shall have all the powers of an officer making inspection for the purposes of inspecting books of account and other books and papers of any licensee or grantee under section 209A of the Companies Act, 1956.

1 of 1956.

(5) It shall be the duty of every licensee and grantee to carry out the directions of the Commission given under this section.

Licenses to operate
wireless equipment
onboard.

79. (1) No person shall operate any wireless equipment onboard any ship or aircraft registered in India without a license granted by such authority or agency as may be notified by the Central Government in this behalf.

(2) The Central Government may prescribe the qualification for the authority to be notified under sub-section (1) and the manner for granting the license to operate wireless equipment onboard ships and aircraft.

(3) The Central Government may prescribe the qualification for the person to whom a license for operating wireless equipment referred to in sub-section (1) may be granted, examination, if any, to be conducted for granting such license, the conditions of the license, the fee to be paid therefor and other connected matters.

Recovery of civil
liabilities.

80. Without prejudice to other modes of recovery, any civil liability imposed under this Act shall, if not paid, be recovered as an arrear of land revenue, and the Commission shall be empowered to suspend the license or registration of the person on whom the civil liability is imposed till the same is paid.

Supply of
information to
authorised officer.

81. Notwithstanding anything contained in any law for the time being in force, where the Central Government or a State Government is satisfied that any information, document or record in possession or control of any service provider relating to any service availed of by any consumer or subscriber is necessary to be furnished in relation to any pending or apprehended civil or criminal

proceedings, an officer, specially authorised in writing by such Government in this behalf, shall direct such service provider to furnish such information, document or record to him and the service provider shall comply with the direction of such officer.

82. Subject to the provisions contained in Chapter VI, nothing contained in this Act shall apply to network infrastructure facilities or communication services owned, and operated by the Central Government or any State Government for their own use.

Act not to apply in certain cases.

83. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Officer or the Appellate Tribunal or the Commission is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Bar of jurisdiction of civil courts.

84. The Chairperson, Members, officers and other employees of the Commission, and the chairperson, members, officers and other employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Chairperson, Members, etc., to be public servants.

45 of 1860.

85. No suit, prosecution or other legal proceeding shall lie against the Commission or any Member or officer or other employee thereof or against the Appellate Tribunal or the chairperson or member or officer or other employee thereof for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or regulation or order made thereunder.

Protection of action taken in good faith.

27 of 1957.
43 of 1961.

86. Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961, or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Commission or Appellate Tribunal shall not be liable to pay wealth-tax, income-tax or any other tax in respect of its wealth, income, profits or gains derived.

Exemption from tax on wealth and income.

87. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Act to have overriding effect.

88. (1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) other services relating to content application service under clause (10) of section 2;

(b) other services relating to network application services under clause (16) of section 2;

(c) other facilities relating to network infrastructure facilities under clause (17) of section 2;

(d) other service relating to networking service under clause (18) of section 2;

(e) obligation in respect of services under clause (33) of section 2;

(f) other services relating to value added network application service under clause (34) of section 2;

(g) other article or apparatus relating to wireless equipment under clause (35) of section 2;

(h) search committee for the purposes of sub-section (1) of section 7;

(i) the tenure of part-time Members under sub-section (2) of section 8;

(j) the salary, allowances payable to and other terms and conditions of service of, the Chairperson and other Members under section 10;

(k) any other matters in respect of which the Commission may exercise the powers of a civil court under clause (j) of sub-section (1) of section 14;

(l) the terms and conditions of service of the Secretary-General under sub-section (3) of section 15;

(m) other matters under clause (vi) of sub-section (2) of section 18;

(n) measures to protect consumer interests under clause (vii) of sub-section (2) of section 18;

(o) other matters under clause (xv) of sub-section (2) of section 18;

(p) fee for assignment of frequencies under sub-section (5) of section 23;

(q) the manner and time frame for consultation between the Spectrum Manager and the Commission for seeking allocation of additional spectrum under sub-section (2) of section 24;

(r) life saving services to be provided by the service provider under sub-clause (ii) of sub-section (1) of section 28;

(s) the manner in which the number and type of broadcasting services including those of the public service broadcaster is to be provided by every service provider under clause (i) of sub-section (3) of section 28;

(t) the form in which a complaint may be filed under sub-section (2) of section 38;

(u) experience required for appointment of an Adjudicating Officer under sub-section (3) of section 39;

(v) any other matters in respect of which an Adjudicating Officer may exercise the powers of the civil court under clause (j) of sub-section (5) of section 39;

(w) the form, the manner of verification and fee to be accompanied with the appeal under clause (a) of sub-section (3) of section 43;

(x) the form, the manner of verification and fee to be accompanied with the appeal under clause (b) of sub-section (3) of section 43;

(y) search committee for the purposes of sub-section (3) of section 44;

(z) the salary and allowances payable to, and other terms and conditions of service of, the chairperson and other members of the Appellate Tribunal under sub-section (3) of section 45;

(za) any other matters in respect of which the Appellate Tribunal may exercise the powers of a civil court under clause (j) of sub-section (1) of section 48;

(zb) the conditions subject to which appointments of officers and employees of the Commission or the Appellate Tribunal shall be made under sub-section (1) of section 53;

(zc) the salary and allowances payable to, and the terms and conditions of service of the officers and employees of the Commission and of the Appellate Tribunal under sub-section (2) of section 53;

(zd) the portion or percentage of license fee as may be attributable to Universal Service Obligation to be credited to the Universal Service Obligation Fund under sub-section (2) of section 54;

(ze) the form and manner in which the annual statement of accounts shall be prepared under sub-section (1) of section 57;

(zf) the information relating to the proceedings and policy to be contained in the annual report under sub-section (1) of section 58;

(zg) the manner of setting up high powered committees or other appropriate mechanism by the Central Government or a State Government under sub-section (6) of section 59;

(zh) safeguards under sub-section (1) of section 66;

(zi) the qualifications for the authority to be notified under sub-section (1) of section 79 and the manner for granting licences under sub-section (2) of that section;

(zj) the qualifications for the person to whom a license for operating wireless equipment referred to in sub-section (1) of section 79 may be granted, examination, if any, to be conducted for granting such license, the conditions of the license, the fee to be paid therefor and other connected matters under sub-section (3) of that section;

(zk) any other matter which is to be, or may be prescribed, or in respect of which provision is to be made, by rules.

89. (1) The Commission may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

Power to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the functions to be performed by the regional offices of the Commission under section 12;

(b) the time and places, and the procedure to be observed in regard to the transaction of business at the meetings of the Commission under sub-section (1) of section 13;

(c) the powers and functions of the Secretary- General under sub-section (1) of section 15;

(d) the programme codes and standards to be specified under section 20;

(e) the eligibility conditions for grant of license or registration, restrictions regarding ownership and control of the media, restrictions on the number of licenses or extent of accumulation of interest of such licenses by a person and other conditions as may be considered necessary under sub-section (1) of section 26;

(f) the obligations, conditions, restrictions, tariffs and rates subject to which a service provider shall provide facilities and services under clause (a) of sub-section (2) of section 26;

(g) the conditions subject to which a license or registration may be granted or transferred under clause (b) of sub-section (2) of section 26;

(h) the manner, the time, the terms and conditions, the fee and the procedure for grant of a license or registration under sub-section (3) of section 26;

(i) the details to be specified under sub-section (4) of section 26;

(j) the period for which license or registration shall be granted under sub-section (1) of section 27;

(k) the form and the fee payable for granting license or registration under sub-section (2) of section 27;

(l) the number of channels for providing distribution of broadcasting services under clause (iii) of sub-section (3) of section 28;

(m) other agreements to be registered with Commission under clause (c) of section 29;

(n) the form of application and the fee to be accompanied therewith under sub-section (2) of section 30;

(o) the conditions and restrictions subject to which the license is granted under sub-section (4) of section 30;

(p) the manner of holding inquiry by the Adjudicating Officer under sub-section (1) of section 39;

(q) the documentary records and transmission schedules to be maintained by the licensee or grantee under clause (b) of sub-section (1) of section 78;

(r) the eligibility and other terms and conditions for granting license or registration under sub-section (3) of section 93;

(s) such other regulation as may be required to carry out the purposes of the Act.

Laying of rules and regulations.

90. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

91.(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient, for removing the difficulty:

Power to remove difficulties.

Provided that no such order shall be made after the expiry of the period of three years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

92. In the Code of Criminal Procedure, 1973,—

Amendment of 2 of 1974

(a) in section 91, in sub-section (3), in clause (b), for the words “postal or telegraph authority”, the words and figures “postal authority or any service provider holding a license or registration granted under the Communication Convergence Act, 2001” shall be substituted;

(b) in section 92, for the words “postal or telegraph authority”, wherever they occur, the words and figures “postal authority or any service provider holding a license or registration granted under the Communication Convergence Act, 2001” shall be substituted.

CHAPTER XIX

REPEAL AND SAVINGS

93. (1) Subject to the other provisions of this section, the enactments namely, the Indian Telegraph Act, 1885, the Indian Wireless Telegraphy Act, 1933, the Telegraph Wires (Unlawful Possession) Act, 1950 and the Telecom Regulatory Authority of India Act, 1997, are hereby repealed.

Repeal of certain Acts, saving of licenses and registrations and dissolution of certain Authorities

(2) Notwithstanding such repeal, any person, who has obtained a license or registration under the Acts repealed under sub-section (1), or who has obtained registration under the policy of the Central Government in force may continue to provide his services, if he has made an application to the Commission for the grant of a license or registration under this Act within a period of six months from the date of establishment of the Commission under this Act or where he has already made such an application, until the disposal of such application, whichever is later.

(3) The Commission shall, on receipt of an application referred to in sub-section (2), grant a license or registration after taking into consideration the terms and conditions on which such services were licensed or registered under any of the provisions of the repealed Acts, or the policy referred to in sub-section (2), as the case may be, and keeping in view the objectives of this Act.

(4) During the period of six months mentioned in sub-section (2) or till his application is disposed of, whichever is later, the applicant shall continue to be governed by, and shall comply with, the provisions of the Indian Telegraph Act, 1885, the Indian Wireless Telegraphy Act, 1933, the Telegraph Wires (Unlawful Possession) Act, 1950 or the Telecom Regulatory Authority of India Act, 1997, as the case may be, as if these Acts had not been repealed, or the policy referred to in sub-section (2).

(5) Save as otherwise provided under this Act, with effect from the date of the establishment of the Commission and the Appellate Tribunal under this Act, as the case may be, the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997 and the Telecom Disputes Settlement and Appellate Tribunal established under section 14 of that Act, shall stand dissolved.

13 of 1885.
17 of 1933.
74 of 1950.
24 of 1997.

13 of 1885.
17 of 1933.
74 of 1950.
24 of 1997.

24 of 1997.

Repeal of Act 7 of
1995 and
transitional
provisions

94. (1) Subject to the other provisions of this section, the Cable Television Networks (Regulation) Act, 1995 is hereby repealed.

(2) Notwithstanding such repeal, any cable operator registered under the Act so repealed, may continue to provide his cable service, if he has made an application to the Commission for the grant of a license under this Act within a period of six months from the date of the establishment of the Commission under this Act or where he has already made such an application, until the disposal of such application, whichever is later.

(3) The Commission shall, on receipt of an application referred to in sub-section (2), grant a license after taking into consideration the terms and conditions on which such cable operator was registered under the provisions of the repealed Act, and keeping in view the objectives of this Act.

(4) During the period of six months mentioned in sub-section (2), or till his application is disposed of, whichever is later, the applicant cable operator shall continue to be governed by, and shall comply with, the provisions of the Cable Television Networks (Regulations) Act, 1995 as if that Act had not been repealed.

STATEMENT OF OBJECTS AND REASONS

Convergence connoting the provision of different kinds of services over the existing infrastructure, and the enhancement of existing technologies so as to provide a wide variety of services is a relatively new phenomena; in addition, the rapid technological developments are leading to an inability to predict the emergence of new services. The existing legislations are proving inadequate in dealing with the emerging scenario of convergence. Furthermore, the existing licensing and registration powers, and the regulatory mechanisms for the telecom, information technology and broadcasting sectors are currently spread over different authorities. Therefore, a flexible type of legislation to accommodate and encourage permutation and combination of technologies and services is required. The Communication Convergence Bill proposes to establish a structured mechanism to promote, facilitate and develop in an orderly manner the carriage and content of communications (including broadcasting, telecommunications and multimedia) in the scenario of increasing convergence of technologies.

2. The Bill aims at facilitating development of national infrastructure for an information based society, and to enable access thereto; provide a choice of services to the people with a view to promoting plurality of news, views and information; establish a regulatory framework for carriage and content of communications in the scenario of convergence of telecommunications, broadcasting, data-communication, multimedia and other related technologies and services; and establish the powers, procedures and functions of a single regulatory and licensing authority and of the Appellate Tribunal.

3. These objectives are proposed to be achieved by setting up an autonomous body to be known as the Communications Commission of India with wide ranging powers, duties and functions. The Head Office of the proposed Commission shall be located at Delhi and its regional offices will be located at Kolkata, Chennai and Mumbai. The Commission shall consist of a Chairperson, not more than ten Members and the Spectrum Manager as an ex-officio Member. The Chairperson and Members, other than the ex-officio Member, shall be appointed by the Central Government from amongst persons of eminence recommended by a Search Committee from fields such as literature, performing arts, media, culture, telecommunications, law, broadcasting technology, information technology, finance etc.

4. The Bill proposes to combine and bring under the purview of the Commission the licensing and registration powers and the regulatory mechanisms for the telecom, information technology and broadcasting sectors. It is also proposed to replace large number of categories of license with the following five broad categories to enable service providers to offer a range of services within each category, namely:—

- (a) to provide or own network infrastructure facilities.
- (b) to provide networking services.
- (c) to provide network application services.
- (d) to provide content application services.
- (e) to provide value added network application services.

5. This flexible licensing regime is expected to optimize the use of resources, and encourage the development of infrastructure. The information technology enabled services such as call centres, electronic-commerce, tele-banking, tele-education, tele-trading, tele-medicine, videotex, video

conferencing shall not be licensed under this legislation and all the facilities and services exempted from licensing or registration immediately before the commencement of this legislation shall continue to be so exempt, until otherwise notified.

6. The Commission is envisaged to be involved in the assignment of spectrum; it will carry out frequency management, planning and monitoring for non-strategic or commercial usage of spectrum; determine appropriate tariffs and rates for services; facilitate and regulate all matters relating to the carriage and content of communications; promote competition; take measures to protect consumer interest and promote and enforce universal service obligations; formulate and lay down codes and technical standards and norms to ensure in a technology neutral manner the quality and interoperability of services and network infrastructure facilities; report and make recommendations either *suo motu* or on such matters as may be referred to it by the Central Government, etc.

7. The Commission is also proposed to be empowered with dispute resolution functions, and will have the power to appoint Adjudicating Officers. It is also proposed to set up an Appellate Tribunal, to be known as the Communications Appellate Tribunal, to hear appeals against decisions or orders of the Commission, or against orders of Adjudicating Officers imposing civil liabilities. The jurisdiction of the Appellate Tribunal may be exercised by its Benches, which shall ordinarily sit at Delhi and at such other places as may be notified. The Appellate Tribunal shall consist of a Chairperson and not more than six Members. The Chairperson of the Appellate Tribunal shall be a person who is, or has been, a Judge of the Supreme Court, and shall be appointed in consultation with the Chief Justice of India. The Members of the Appellate Tribunal shall be appointed from amongst persons recommended by the Search Committee and they should be, or should have been, Judges of High Court or should have held the post of Secretary to the Government of India or any equivalent post in the Central Government or a State Government for a period of not less than two years, or should be persons who are proficient in any of the fields specified for appointment as Members of the Commission.

8. The Bill proposes to repeal the following legislations, namely:—

- (a) The Indian Telegraph Act 1885.
- (b) The Indian Wireless Telegraphy Act 1933.
- (c) The Telegraph Wires (Unlawful Possession) Act 1950.
- (d) The Telecom Regulatory Authority of India Act 1997.
- (e) The Cable Television Networks (Regulation) Act 1995.

9. The Bill also provides that with effect from the dates of establishment of the Commission and of the Appellate Tribunal, the Telecom Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal respectively, established under the Telecom Regulatory Authority of India Act 1997, shall stand dissolved and proceedings pending before them shall stand transferred and deemed to be pending respectively before the Commission and the Appellate Tribunal.

10. The Bill seeks to achieve the above objectives

NEW DELHI;
The 29th August, 2001.

RAM VILAS PASWAN.

FINANCIAL MEMORANDUM

Clause 6 of the Bill proposes to provide for the establishment of an autonomous body, namely the Communications Commission of India. Clause 16 of the Bill empowers the Commission, if it considers necessary, to set up bureaux or divisional organisations on the basis of its principal workload operations. Clause 43 of the Bill proposes to provide for the establishment of an appellate body, namely the Communications Appellate Tribunal. Clause 44 of the Bill stipulates that the benches of the Appellate Tribunal can also sit at such other places as may be notified. Clause 53 of the Bill provides for salaries and allowances payable to the officers and other employees of the Commission and Appellate Tribunal. Clause 55 of the Bill provides for constitution of the Communications commission fund and Appellate Tribunal Fund and credit thereto of the grants by the Central Government.

2. The recurring expenditure including on pay and allowances etc, of the Chairperson and Members of the Communications Commission of India and the chairperson and members of the Communications Appellate Tribunal, and on the officers and other employees of the Commission and of the Appellate Tribunal is estimated at approximately at Rs. 50 crores per annum. The non-recurring expenditure on items such as furniture, office equipment, vehicles etc. is estimated at approximately Rs. 20 crores.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 88 of the Bill empowers the Central Government to make rules for carrying out the purposes of the proposed legislation. The matters in respect of which rules may be made, *inter alia*, relate to the services relating to content application service, network application service, networking service, value added network application service; facilities relating to network infrastructure facilities; the salary, allowances and other terms and conditions of service of the Chairperson and Members, and of the officers and other employees of the Communications Commission of India and of the Communications Appellate Tribunal; life saving services to be provided by service providers; measure to protect consumer interests and promote and enforce Universal Service Obligations, etc.

2. Clause 89 of the Bill empowers the Commission to make regulations consistent with the proposed legislation and the rules made thereunder. The matters in respect of which regulations may be made, *inter alia*, relate to the functions to be performed by the regional offices of the Commission the time and places and the procedure to be observed in regard to the transaction of business at the meetings of the Commission; powers and functions of the Secretary-General; the eligibility conditions for grant of license or registration the obligations, conditions, restrictions, tariffs and rates subject to which a service provider shall provide facilities and services; the conditions subject to which a license or registration may be granted or transferred; the manner, the time, the terms and conditions, the fee and the procedure for grant of a license or registration, etc.

3. Clause 91 of the Bill empowers the Central Government by order to remove certain difficulties which may appear to it to be necessary or expedient. Further, such order shall not be made under this clause after the expiry of a period of three years from the commencement of this Act. Every such order shall be laid before both Houses of Parliament.

4. The matters in respect of which the rules, regulations and orders may be made are matters of administrative detail and procedure, and as such the delegation of legislative power is of a normal character.

IV

BILL NO. 88 OF 2001

A Bill further to amend the Companies Act, 1956.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Companies (Second Amendment) Act, 2001.

Short title
and com-
mencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

1 of 1956.

2. In the Companies Act, 1956, after Part IX, the following Part shall be inserted namely:—

Insertion of
new Part IXA.

'PART IXA

CHAPTER I

PRODUCER COMPANIES

581A. In this Part, unless the context otherwise requires,—

Definitions.

(a) "active Member" means a member who fulfils the quantum and period of patronage of the Producer Company as may be required by the articles;

(b) "Chief Executive" means an individual appointed as such under sub-section (i) of section 581W;

(c) "limited return" means the maximum dividend as may be specified by the articles;

(d) "Member" means a person or Producer institution (whether incorporated or not) admitted as a Member of a Producer Company and who retains the qualifications necessary for continuance as such;

(e) "inter-State co-operative society" means a multi-State co-operative society as defined in clause (k) of section 3 of the Multi-State Co-operative Societies Act, 1984 and includes any co-operative society registered under any other law for the time being in force, which has, subsequent to its formation, extended any of its objects to more than one State by enlisting the participation of persons or by extending any of its activities outside the State, whether directly or indirectly or through an institution of which it is a constituent;

51 of 1984

(f) "mutual assistance principles" means the principles set out in sub-section (2) of section 581G;

(g) "officer" includes any director or Chief Executive or Secretary or any person in accordance with whose directions or instructions part or whole of the business of the Producer Company is carried on;

(h) "patronage" means the use of services offered by the Producer Company to its Members by participation in its business activities;

(i) "patronage bonus" means payments made by a Producer Company out of its surplus income to the Members in proportion to their respective patronage;

(j) "primary produce" means—

(i) produce of farmers, arising from agriculture (including animal husbandry, horticulture, floriculture, pisciculture, viticulture, forestry, forest products, re-vegetation, bee raising and farming plantation products), or from any other primary activity or service which promotes the interest of the farmers or consumers; or

(ii) produce of persons engaged in handloom, handicraft and other cottage industries;

(iii) any product resulting from any of the above activities, including by-products of such products;

(iv) any product resulting from an ancillary activity that would assist or promote any of the aforesaid activities or anything ancillary thereto;

(v) any activity which is intended to increase the production of anything referred to in sub-clauses (i) to (iv) or improve the quality thereof;

(k) "producer" means any person engaged in any activity connected with or relatable to any primary produce;

(l) "Producer Company" means a body corporate having objects or activities specified in section 581B and registered as Producer Company under this Act;

(m) "Producer institution" means a Producer Company or any other institution having only producer or producers or Producer Company or Producer Companies as its member whether incorporated or not having any of the objects referred to in section 581B and which agrees to make use of the services of the Producer Company or Producer Company as provided in its articles.

(n) "withheld price" means part of the price due and payable for goods supplied by any Member to the Producer Company; and as withheld by the Producer Company for payment on a subsequent date.

CHAPTER II

INCORPORATION OF PRODUCER COMPANIES AND OTHER MATTERS

581B. (1) The objects of the Producer Company shall relate to all or any of the following matters, namely:—

Objects of
Producer
Company.

(a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit;

Provided that the Producer Company may carry on any of the activities specified in this clause either by itself or through other institution;

(b) processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its Members;

(c) manufacture, sale or supply of machinery, equipment or consumables mainly to its Members;

(d) providing education on the mutual assistance principles to its Members and others;

(e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members;

(f) generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce;

(g) insurance of producers or their primary produce;

(h) promoting techniques of mutuality and mutual assistance;

(i) welfare measures or facilities for the benefit of Members as may be decided by the Board;

(j) any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner.

(k) financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include extending of credit facilities or any other financial services to its Members.

(2) Every Producer Company shall deal primarily with the produce of its active Members for carrying out any of its objects specified in this section.

581C. (1) Any ten or more individuals, each of them being a producer or any two or more producer institutions, or a combination of ten or more individuals and producer institutions, desirous of forming a Producer Company having its objects specified in section 581B and otherwise complying with the requirements of this Part and the provisions of this Act in respect of registration, may form an incorporated Company as a Producer Company under this Act.

Formation of
Producer
Company and
its registration.

(2) If the Registrar is satisfied that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, he shall, within thirty days of the receipt of the documents required for registration, register the memorandum, the articles and other documents, if any, and issue a certificate of incorporation under this Act.

(3) A Producer Company so formed shall have the liability of its Members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them and be termed a company limited by shares.

(4) The Producer Company may reimburse to its promoters all other direct costs associated with the promotion and registration of the company including registration, legal fees, printing of a memorandum and articles and the payment thereof shall be subject to the approval at its first general meeting of the Members.

(5) On registration under sub-section (1), the Producer Company shall become a body corporate as if it is a private limited company to which the provisions contained in this Part apply, without, however, any limit to the number of Members thereof, and the Producer Company shall not, under any circumstance whatsoever, become or be deemed to become a public limited company under this Act.

Membership
and voting
rights of
Members of
Producer
Company.

581D. (1) (a) In a case where the membership consists solely of individual members, the voting rights shall be based on a single vote for every Member, irrespective of his shareholding or patronage of the Producer Company.

(b) In a case where the membership consists of Producer institutions only, the voting rights of such Producer institutions shall be determined on the basis of their participation in the business of the Producer Company in the previous year, as may be specified by articles:

Provided that during the first year of registration of a Producer Company, the voting rights shall be determined on the basis of the shareholding by such Producer institutions.

(c) In a case where the membership consists of individuals and Producer institutions, the voting rights shall be computed on the basis of a single vote for every Member.

(2) The articles of any Producer Company may provide for the conditions, subject to which a Member may continue to retain his membership, and the manner in which voting rights shall be exercised by the Members.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), any Producer Company may, if so authorised by its articles, restrict the voting rights to active Members, in any special or general meeting.

(4) No person, who has any business interest which is in conflict with business of the Producer Company, shall become a Member of that Company.

(5) A Member, who acquires any business interest which is in conflict with the business of the Producer Company, shall cease to be a Member of that Company and be removed as a Member in accordance with articles.

Benefits to
Members.

581E. (1) Subject to provisions made in articles, every Member shall initially receive only such value for the produce or products pooled and supplied as the Board of Producer Company may determine, and the withheld price may be disbursed later in cash or in kind or by allotment of equity shares, in proportion to the produce supplied to the Producer Company during the financial year to such extent and in such manner and subject to such conditions as may be decided by the Board.

(2) Every Member shall, on the share capital contributed, receive only a limited return:

Provided that every such Member may be allotted bonus shares in accordance with the provisions contained in section 581ZJ.

(3) The surplus if any, remaining after making provision for payment of limited return and reserves referred to in section 581ZI, may be disbursed as patronage bonus,

amongst the Members, in proportion to their participation in the business of the Producer Company, either in cash or by way of allotment of equity shares, or both, as may be decided by the Members at the general meeting.

581F. The memorandum of association of every Producer Company shall state—

Memorandum
of Producer
Company.

(a) the name of the company with "Producer Company Limited" as the last words of the name of such Company;

(b) the State in which the registered office of the Producer Company is to situate;

(c) the main objects of the Producer Company shall be one or more of the objects specified in section 581B;

(d) the names and addresses of the persons who have subscribed to the memorandum;

(e) the amount of share capital with which the Producer Company is to be registered and division thereof into shares of a fixed amount;

(f) the names, addresses and occupations of the subscribers being producers, who shall act as the first directors in accordance with sub-section (2) of section 581J;

(g) that the liability of its members is limited;

(h) opposite to the subscriber's name the number of shares each subscriber takes:

Provided that no subscriber shall take less than one share;

(i) in case the objects of the Producer Company are not confined to one State, the States to whose territories the objects extend.

581G. (1) There shall be presented, for registration to the Registrar of the State to which the registered office of the Producer Company is, stated by the memorandum of association, to be situate—

Articles of
association.

(a) memorandum of the Producer Company;

(b) its articles duly signed by the subscribers to the Memorandum.

(2) The articles shall contain the following mutual assistance principles, namely:—

(a) the membership shall be voluntary and available, to all eligible persons who, can participate or avail of the facilities or services of the Producer Company, and are willing to accept the duties of membership;

(b) each Member shall, save as otherwise provided in this Part, have only a single vote irrespective of the share holding;

(c) the Producer Company shall be administered by a Board consisting of persons elected or appointed as directors in the manner consistent with the provisions of this Part and the Board shall be accountable to the Members;

(d) save as provided in this Part, there shall be limited return on share capital;

(e) the surplus arising out of the operations of the Producer Company shall be distributed in an equitable manner by—

(i) providing for the development of the business of the Producer Company;

(ii) providing for common facilities; and

(iii) distributing amongst the Members, as may be admissible in proportion to their respective participation in the business;

(f) provision shall be made for the education of Members, employees and others, on the principles of mutuality and techniques of mutual assistance;

(g) the Producer Company shall actively co-operate with other Producer Companies (and other organisations following similar principles) at local, national or international level so as to best serve the interest of their Members and the communities it purports to serve.

(3) Without prejudice to the generality of the foregoing provisions of sub-sections (1) and (2), the articles shall contain the following provisions, namely:—

(a) the qualifications for membership, the conditions for continuance or cancellation of membership and the terms, conditions and procedure for transfer of shares;

(b) the manner of ascertaining the patronage and voting right based on patronage;

(c) subject to the provisions contained in sub-section (1) of section 581N, the manner of constitution of the Board, its powers and duties, the minimum and maximum number of directors, manner of election and appointment of directors and retirement by rotation, qualifications for being elected or continuance as such and the terms of office of the said directors, their powers and duties, conditions for election or co-option of directors, method of removal of directors and the filling up of vacancies on the Board, and the manner and the terms of appointment of the Chief Executive;

(d) the election of the Chairman, term of office of directors and the Chairman, manner of voting at the general or special meetings of Members, procedure for voting, by directors at meetings of the Board, powers of the Chairman and the circumstances under which the Chairman may exercise a casting vote.

(e) the circumstances under which, and the manner in which, the withheld price is to be determined and distributed;

(f) the manner of disbursement of patronage bonus in cash or by issue of equity shares, or both;

(g) the contribution to be shared and related matters referred to in sub-section (2) of section 581ZI;

(h) the matters relating to issue of bonus shares out of general reserves as set out in section 581ZJ;

(i) the basis and manner of allotment of equity shares of the Producer Company in lieu of the whole or part of the sale proceeds of produce or products supplied by the Members;

(j) the amount of reserves, sources from which funds may be raised, limitation on raising of funds, restriction on the use of such funds and the extent of debt that may be contracted and the conditions thereof;

(k) the credit, loans or advances which may be granted to a Member and the conditions for the grant of the same;

(l) the right of any Member to obtain information relating to general business of the company;

(m) the basis and manner of distribution and disposal of funds available after meeting liabilities in the event of dissolution or liquidation of the Producer Company;

(n) the authorisation for division, amalgamation, merger, creation of subsidiaries and the entering into joint ventures and other matters connected therewith;

(o) laying of the memorandum and articles of the Producer Company before a special general meeting to be held within ninety days of its registration;

(p) any other provision, which the Members may, by special resolution recommend to be included in articles.

581H. (1) A Producer Company shall not alter the conditions contained in its memorandum except in the cases, by the mode and to the extent for which express provision is made in this Act.

Amendment
of
memorandum.

(2) A Producer Company may, by special resolution, not inconsistent with section 581B, alter its objects specified in its memorandum.

(3) A copy of the amended memorandum, together with a copy of the special resolution duly certified by two directors, shall be filed with the Registrar within thirty days from the date of adoption of any resolution referred to in sub-section (2):

Provided that in the case of transfer of the registered office of a Producer Company from the jurisdiction of one Registrar to another, certified copies of the special resolution certified by two directors shall be filed with both the Registrars within thirty days, and each Registrar shall record the same, and thereupon the Registrar from whose jurisdiction the office is transferred, shall forthwith forward to the other Registrar all documents relating to the Producer Company.

(4) The alteration of the provisions of memorandum relating to the change of the place of its registered office from one State to another shall not take effect unless it is confirmed by the Company Law Board on petition.

581-I. (1) Any amendment of the articles shall be proposed by not less than two-third of the elected directors or by not less than one-third of the Members of the Producer Company, and adopted by the Members by a special resolution.

Amendment
of articles.

(2) A copy of the amended articles together with the copy of the special resolution, both duly certified by two directors, shall be filed with the Registrar within thirty days from the date of its adoption.

581J. (1) Notwithstanding anything contained in sub-section (1) of section 581C, any inter-State co-operative society with objects not confined to one State may make an application to the Registrar for registration as Producer Company under this Part.

Option to
multi-State co-
operative
societies to
become
Producer
Companies.

(2) Every application under sub-section (1) shall be accompanied by—

(a) a copy of the special resolution, of not less than two-third of total members of inter-State co-operative society, for its incorporation as a Producer Company under this Act;

(b) a statement showing —

(i) names and addresses or the occupation of the directors and Chief Executive, if any, by whatever name called, of such co-operative; and

(ii) list of members of such inter-State co-operative society;

(c) a statement indicating that the inter-State co-operative society is engaged in any one or more of the objects specified in section 581B;

(d) a declaration by two or more directors of the inter-State co-operative society certifying that particulars given in clauses (a) to (c) are correct.

(3) When an inter-State co-operative society is registered as a Producer Company, the words "Producer Company Limited" shall form part of its name with any word or expression to show its identity preceding it.

(4) On compliance with the requirements of sub-sections (1) to (3), the Registrar shall, within a period of thirty days of the receipt of application, certify under his hand that the inter-State co-operative society applying for registration is registered and thereby incorporated as a Producer Company under this Part.

(5) A co-operative society formed by producers, by Federation or Union of co-operative societies of producers or co-operatives of producers, registered under any law for the time being in force which has extended its objects outside the State, either directly or through a union or federation of co-operatives of which it is a constituent, as the case may be, and any Federation or Unions of such co-operatives, which has so extended any of its objects or activities outside the State, shall be eligible to make an application under sub-section (1) and to obtain registration as a Producer Company under this Part.

(6) The inter-State co-operative society shall, upon registration under sub-section (1), stand transformed into a Producer Company, and thereafter shall be governed by the provisions of this Part to the exclusion of the law by which it was earlier governed, save in so far as anything done or omitted to be done before its registration as a Producer Company, and notwithstanding anything contained in any other law for the time being in force, no person shall have any claim against the co-operative institution or the company by reason of such conversion or transformation.

(7) Upon registration as a Producer Company, the Registrar of Companies who registers the company shall forthwith intimate the Registrar with whom the erstwhile inter-State co-operative society was earlier registered for appropriate deletion of the society from its register.

**Vesting of
undertaking in
Producer
Company.**

581K. Every shareholder of the inter-State co-operative society immediately before the date of registration of Producer Company (hereafter referred to as the transformation date) shall be deemed to be registered on and from that date as a shareholder of the Producer Company to the extent of the face value of the shares held by such shareholder.

**Effect of
incorporation
of Producer
Company.**

581L. (1) All properties and assets, movable and immovable, of, or belonging to, the inter-State co-operative society as on the transformation date, shall vest in the Producer Company.

(2) All the rights, debts, liabilities, interests, privileges and obligations of the inter-State co-operative society as on the transformation date shall stand transferred to, and be the rights, debts, liabilities, interests, privileges and obligations of, the Producer Company.

(3) Without prejudice to the provisions contained in sub-section (2), all debts, liabilities and obligations incurred, all contracts entered into and all matters and things engaged to be done by, with or for, the society as on the transformation date for or in connection with their purposes, shall be deemed to have been incurred, entered into, or engaged to be done by, with or for, the Producer Company.

(4) All sums of money due to the inter-State co-operative society immediately before the transformation date, shall be deemed to be due to the Producer Company.

(5) Every organisation, which was being managed immediately before the transformation date by the inter-State Co-operative Society shall be managed by the Producer Company for such period, to such extent and in such manner as the circumstances may require.

(6) Every organisation which was getting financial, managerial or technical assistance from the inter-State co-operative society, immediately before the transformation date, may continue to be given financial, managerial or technical assistance, as the case may be, by the Producer Company, for such period, to such extent and in such manner as that company may deem fit.

(7) The amount representing the capital of the erstwhile inter-State co-operative society shall form part of the capital of the Producer Company.

(8) Any reference to the inter-State co-operative society in any law other than this Act or in any contract or other instrument, shall be deemed to be reference to the Producer Company.

(9) If, on the transformation date, there is pending any suit, arbitration, appeal or other legal proceeding of whatever nature by or against the inter-State co-operative society, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the incorporation of the Producer Company under section 581C or transformation of the inter-State co-operative society as a Producer Company under section 581J, as the case may be, but the suit, arbitration, appeal or other proceeding, may be continued, prosecuted and enforced by or against the Producer Company in the same manner and to the same extent as it would have, or may have been continued, prosecuted and enforced by or against the inter-State co-operative society as if the provisions contained in this Part had not come into force.

581M. With effect from the transformation date, all fiscal and other concessions, licences, benefits, privileges and exemptions granted to the inter-State co-operative society in connection with the affairs and business of the inter-State co-operative society under any law for the time being in force shall be deemed to have been granted to the Producer Company.

Concession, etc., to be deemed to have been granted to Producer Company.

581N. (1) All the directors in the inter-State co-operative society before the incorporation of the Producer Company shall continue in office for a period of one year from the transformation date and in accordance with the provisions of this Act.

Provisions in respect of officers and other employees of inter-State co-operative society.

(2) Every officer or other employee of the inter-State co-operative society (except a director of the Board, Chairman or Managing Director) serving in its employment immediately before the transformation date shall, in so far as such officer or other employee is employed in connection with the inter-State co-operative society which has vested in the Producer Company by virtue of this Act, become, as from the transformation date, an officer or, as the case may be, other employee of the Producer Company and shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges as to leave, leave travel concession, welfare scheme, medical benefit scheme, insurance, provident fund, other funds, retirement, voluntary retirement, gratuity and other benefits as he would have held under the erstwhile inter-State co-operative society if its undertaking had not vested in the Producer Company and shall continue to do so as an officer or, as the case may be, other employee of the Producer Company.

(3) Where an officer or other employee of the inter-State co-operative society opts under sub-section (2) not to be in employment or service of the Producer Company, such officer or other employee shall be deemed to have resigned.

(4) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the transfer of the services of any officer or other employee of the inter-State co-operative society to the Producer Company shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

(5) The officers and other employees who have retired before the transformation date from the service of the inter-State co-operative society and are entitled to any benefits, rights or privileges, shall be entitled to receive the same benefits, rights or privileges from the Producer Company.

(6) The trusts of the provident fund or the gratuity fund of the inter-State co-operative society and any other bodies created for the welfare of officers or employees shall continue to discharge functions in the Producer Company as was being done hitherto in the inter-State co-operative society and any tax exemption granted to the provident fund or the gratuity fund would continue to be applied to the Producer Company.

(7) Notwithstanding anything contained in this Act or in any other law for the time being in force or in the regulations of the inter-State co-operative society, no director of the Board, Chairman, Managing Director or any other person entitled to manage the whole or substantial part of the business and affairs of the inter-State co-operative society shall be entitled to any compensation against the inter-State co-operative society or the Producer Company for the loss of office or for the premature termination of any contract of management entered into by him with the inter-State co-operative society.

CHAPTER III

MANAGEMENT OF PRODUCER COMPANY

Number of
directors.

581-O. Every Producer Company shall have at least five and not more than fifteen directors.

Appointment
of directors.

581P. (1) Save as provided in section 581N, the Members who sign the memorandum and the articles may designate therein the Board of directors (not less than five) who shall govern the affairs of the Producer Company until the directors are elected in accordance with the provisions of this section.

(2) The election of directors shall be conducted within a period of ninety days of the registration of the Producer Company.

(3) Every person shall hold office of a director for a period not less than one year but not exceeding five years as may be specified in the articles.

(4) Every director, who retires in accordance with the articles, shall be eligible for re-appointment as a director.

(5) Save as provided in sub-section (2), the directors of the Board shall be elected or appointed by the Members in the annual general meeting.

(6) The Board may co-opt one or more expert directors or an additional director not exceeding one-fifth of the total number of directors or appoint any other person as additional director for such period as the Board may deem fit:

Provided that the expert directors shall not have the right to vote in the election of the Chairman but shall be eligible to be elected as Chairman, if so provided by its articles :

Provided further that the maximum period, for which the expert director or the additional director holds office, shall not exceed such period as may be specified in the articles.

581Q. (1) The office of the director of a Producer Company shall become vacant if—

Vacation of office by directors.

(a) he is convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months;

(b) the Producer Company, in which he is a director, has made a default in repayment of any advances or loans taken from any company or institution or any other person and such default continues for ninety days;

(c) he has made a default in repayment of any advances or loans taken from the Producer Company in which he is a director;

(d) the Producer Company, in which he is a director—

(i) has not filed the annual accounts and annual return for any continuous three financial years commencing on or after the 1st day of April, 2002; or

(ii) has failed to, repay its deposit or withheld price or patronage bonus or interest thereon on due date, or pay dividend and such failure continues for one year or more;

(e) default is made in holding election for the office of director, in the Producer Company in which he is a director, in accordance with the provisions of this Act and articles;

(f) the annual general meeting or extraordinary general meeting of the Producer Company, in which he is a director, is not called in accordance with the provisions of this Act except due to natural calamity or such other reason.

(2) The provisions of sub-section (1) shall, as far as may be, apply to the director of a producer institution which is a member of a Producer Company.

581R. (1) Subject to the provisions of this Act and articles, the Board of directors of a Producer Company shall exercise all such powers and to do all such acts and things, as that company is authorised so to do.

Powers and functions of Board.

(2) In particular and without prejudice to the generality of the foregoing powers, such powers may include all or any of the following matters, namely:—

(a) determination of the dividend payable;

(b) determination of the quantum of withheld price and recommend patronage to be approved at general meeting;

(c) admission of new Members ;

(d) pursue and formulate the organisational policy, objectives, establish specific long-term and annual objectives, and approve corporate strategies and financial plans ;

(e) appointment of a Chief Executive and such other officers of the Producer Company, as may be specified in the articles ;

(f) exercise superintendence, direction and control over Chief Executive and other officers appointed by it;

(g) cause proper books of account to be maintained; prepare annual accounts to be placed before the annual general meeting with the auditor's report and the replies on qualifications, if any, made by the auditors;

(h) acquisition or disposal of property of the Producer Company in its ordinary course of business;

(i) investment of the funds of the Producer Company in the ordinary course of its business;

(j) sanction any loan or advance, in connection with the business activities of the Producer Company to any Member, not being a director or his relative;

(k) take such other measures or do such other acts as may be required in the discharge of its functions or exercise of its powers.

(3) All the powers specified in sub-sections (1) and (2) shall be exercised by the Board, by means of resolution passed at its meeting on behalf of the Producer Company.

Explanation.—For the removal of doubts, it is hereby declared that a director or a group of directors, who do not constitute the Board, shall not exercise any of the powers exercisable by it.

Matters to be transacted at general meeting.

581S. (1) The Board of directors of a Producer Company shall exercise the following powers on behalf of that company, and it shall do so only by means of resolutions passed at the annual general meeting of its Members, namely:—

(a) approval of budget and adoption of annual accounts of the Producer Company;

(b) approval of patronage bonus ;

(c) issue of bonus shares ;

(d) declaration of limited return and decision on the distribution of patronage;

(e) specify the conditions and limits of loans that may be given by the Board to any director; and

(f) approval of any transaction of the nature as is to be reserved in the articles for approval by the Members.

Liability of directors.

581T. (1) When the directors vote for a resolution, or approve by any other means, any thing done in contravention of the provisions of this Act or any other law for the time being in force or articles, they shall be jointly and severally liable to make good any loss or damage suffered by the Producer Company.

(2) Without prejudice to the provisions contained in sub-section (1), the Producer Company shall have the right to recover from its director—

(a) where such director has made any profit as a result of the contravention specified in sub-section (1), an amount equal to the profit so made;

(b) where the Producer Company incurred a loss or damage as a result of the contravention specified in sub-section (1), an amount equal to that loss or damage;

(3) The liability imposed under this section shall be in addition to and not in derogation of a liability imposed on a director under this Act or any other law for the time being in force.

581U. (1) The Board may constitute such number of committees as it may deem fit for the purpose of assisting the Board in the efficient discharge of its functions:

Committee of directors.

Provided that the Board shall not delegate any of its powers or assign the powers of the Chief Executive, to any committee.

(2) A committee constituted under sub-section (1) may, with the approval of the Board, co-opt such number of persons as it deems fit as members of the committee:

Provided that the Chief Executive appointed under section 581W or a director of the Producer Company shall be a member of such committee.

(3) Every such committee shall function under the general superintendence direction and control of the Board, for such duration, and in such manner as the Board may direct.

(4) The fee and allowances to be paid to the members of the committee shall be such as may be determined by the Board.

(5) The minutes of each meeting of the committee shall be placed before the Board at its next meeting.

581V. (1) A meeting of the Board shall be held not less than once in every three months and at least four such meetings shall be held in every year.

Meetings of Board and quorum.

(2) Notice of every meeting of the Board of directors shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.

(3) The Chief Executive shall give notice as aforesaid not less than seven days prior to the date of the meeting of the Board and if he fails to do so, he shall be punishable with fine which may extend to one thousand rupees:

Provided that a meeting of the Board may be called at shorter notice and the reasons thereof shall be recorded in writing by the Board.

(4) The quorum for a meeting of the Board shall be one-third of the total strength of directors, subject to a minimum of three.

(5) Save as provided in the articles, directors including the co-opted director, may be paid such fees and allowances for attendance at the meetings of the Board, as may be decided by the Members in the general meeting.

581W. (1) Every Producer Company shall have a full time Chief Executive, by whatever name called, to be appointed by the Board from amongst persons other than Members.

Chief Executive and his functions.

(2) The Chief Executive shall be *ex officio* director of the Board and such director shall not retire by rotation.

(3) Save as otherwise provided in articles, the qualifications, experience and the terms and conditions of service of the Chief Executive shall be such as may be determined by the Board.

(4) The Chief Executive shall be entrusted with substantial powers of management as the Board may determine.

(5) Without prejudice to the generality of sub-section (4), the Chief Executive may exercise the powers and discharge the functions, namely:—

(a) do administrative acts of a routine nature including managing the day-to-day affairs of the Producer Company;

(b) operate bank accounts or authorise any person, subject to the general or special approval of the Board in this behalf, to operate the bank account;

(c) make arrangements for safe custody of cash and other assets of the Producer Company;

(d) sign such documents as may be authorised by the Board, for and on behalf of the company;

(e) maintain proper books of account; prepare annual accounts and audit thereof; place the audited accounts before the Board and in the annual general meeting of the Members;

(f) furnish Members with periodic information to appraise them of the operation and functions of the Producer Company;

(g) make appointments to posts in accordance with the powers delegated to him by the Board;

(h) assist the Board in the formulation of goals, objectives, strategies, plans and policies;

(i) advise the Board with respect to legal and regulatory matters concerning the proposed and on going activities and take necessary action in respect thereof;

(j) exercise the powers as may be necessary in the ordinary course of business;

(k) discharge such other functions, and exercise such other powers, as may be delegated by the Board.

(6) The Chief Executive shall manage the affairs of the Producer Company under the general superintendence, direction and control of the Board and be accountable for the performance of the Producer Company.

Secretary of
Producer
Company.

581X. (1) Every Producer Company having an average annual turnover exceeding five crore rupees in each of three consecutive financial years shall have a whole-time secretary.

(2) No individual shall be appointed as whole-time secretary unless he possesses membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980.

(3) If a Producer Company fails to comply with the provisions of sub-section (1), the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues:

Provided that in any proceedings against a person in respect of an offence under this sub-section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole-time secretary.

581Y. Unless the articles require a larger number, one-fourth of the total membership shall constitute the quorum at a general meeting.

Quorum.

581Z. Save as otherwise provided in sub-sections (1) and (3) of section 581D, every Member shall have one vote and in the case of equality of votes, the Chairman or the person presiding shall have a casting vote except in the case of election of the Chairman.

Voting rights.

CHAPTER IV

GENERAL MEETINGS

581ZA. (1) Every Producer Company shall in each year, hold, in addition to any other meetings, a general meeting, as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a Producer Company and that of the next:

Annual
general
meetings.

Provided that the Registrar may, for any special reason, permit extension of the time for holding any annual general meeting (not being the first annual general meeting) by a period not exceeding three months.

(2) A Producer Company shall hold its first annual general meeting within a period of ninety days from the date of its incorporation.

(3) The Members shall adopt the articles of the Producer Company and appoint directors of its Board in the annual general meeting.

(4) The notice calling the annual general meeting shall be accompanied by the following documents, namely:—

(a) the agenda of the annual general meeting;

(b) the minutes of the previous annual general meeting or the extraordinary general meeting;

(c) the names of candidates for election, if any, to the office of director including a statement of qualifications in respect of each candidate;

(d) the audited balance-sheet and profit and loss accounts of the Producer Company and its subsidiary, if any, together with a report of the Board of Directors of such Company with respect to—

(i) the state of affairs of the Producer Company;

(ii) the amount proposed to be carried to reserve;

(iii) the amount to be paid as limited return on share capital;

(iv) the amount proposed to be disbursed as patronage bonus;

(v) the material changes and commitments, if any, affecting the financial position of the Producer Company and its subsidiary, which have occurred in between the date of the annual accounts of the Producer

Company to which the balance-sheet relates and the date of the report of the Board;

(vi) any other matter of importance relating to energy conservation, environmental protection, expenditure or earnings in foreign exchanges;

(vii) any other matter which is required to be, or may be, specified by the Board;

(e) the text of the draft resolution for appointment of auditors;

(f) the text of any draft resolution proposing amendment to the memorandum or articles to be considered at the general meeting, along with the recommendations of the Board.

(4) The Board of directors shall, on the requisition made in writing, duly signed and setting out the matters for the consideration, made by one-third of the Members entitled to vote in any general meeting, proceed to call an extraordinary general meeting in accordance with the provisions contained in sections 169 to 186 of this Act..

(5) Every annual general meeting shall be called, for a time during business hours, on a day that is not a public holiday and shall be held at the registered office of the Producer Company or at some other place within the city, town or village in which the registered office of the Company is situate.

(6) A general meeting of the Producer Company shall be called by giving not less than fourteen days prior notice in writing.

(7) The notice of the general meeting indicating the date, time and place of the meeting shall be sent to every Member and auditor of the Producer Company.

(8) Unless the articles of the Producer Company provide for a larger number, one-fourth of the total number of members of the Producer Company shall be the quorum for its general meeting.

(9) The proceedings of every annual general meeting along with the Directors' Report, the audited balance-sheet and the profit and loss account shall be filed with the Registrar within sixty days of the date on which the annual general meeting is held, with an annual return along with the filing fees as applicable under the Act.

(10) In the case where a Producer Company is formed by Producer institutions, such institutions shall be represented in the general body through the Chairman or the Chief Executive thereof who shall be competent to act on its behalf:

Provided that a Producer institution shall not be represented if such institution makes a default or failure referred to in clauses (d) to (f) of sub-section (1) of section 581Q.

CHAPTER V

SHARE CAPITAL AND MEMBERS RIGHTS

Share capital. 581ZB. (1) The share capital of a Producer Company shall consist of equity shares only.

(2) The shares held by a Member in a Producer Company, shall as far as may be, be in proportion to the patronage of that company.

Special user rights.

581ZC. (1) The producers, who are active Members may, if so provided in the articles, have special rights and the Producer Company may issue appropriate instruments to them in respect of such special rights.

(2) The instruments of the Producer Company issued under sub-section (1) shall, after obtaining approval of the Board in that behalf, be transferable to any other active Member of that Producer Company.

Explanation.—For the purposes of this section, the expression “special right” means any right relating to supply of additional produce by the active Member or any other right relating to his produce which may be conferred upon him by the Board.

581ZD. (1) Save as otherwise provided in sub-sections (2) to (4), the shares of a Member of a Producer Company shall not be transferable.

Transferability
of shares and
attendant
rights.

(2) A Member of a Producer Company may, after obtaining the previous approval of the Board, transfer the whole or part of his shares along with any special rights, to an active Member at par value.

(3) Every Member shall, within three months of his becoming a Member in the Producer Company, nominate, in the manner specified in articles, a person to whom his shares in the Producer Company shall vest in the event of his death.

(4) The nominee shall, on the death of the Member, become entitled to all the rights in the shares of the Producer Company and the Board of that Company shall transfer the shares of the deceased Member to his nominee:

Provided that in a case where such nominee is not a producer, the Board shall direct the surrender of shares together with special rights, if any, to the Producer Company at par value or such other value as may be determined by the Board.

(5) Where the Board of a Producer Company is satisfied that—

- (a) any Member has ceased to be a primary producer; or
- (b) any Member has failed to retain his qualifications to be a Member as specified in articles,

the Board shall direct the surrender of shares together with special rights, if any, to the Producer Company at par value or such other value as may be determined by the Board:

Provided that the Board shall not direct such surrender of shares unless the Member has been served with a written notice and given an opportunity of being heard.

CHAPTER VI

FINANCE, ACCOUNTS AND AUDIT

581ZE. (1) Every Producer Company shall keep at its registered office proper books of account with respect to —

Books of
account.

(a) all sums of money received and expended by the Producer Company and the matters in respect of which the receipts and expenditure take place;

(b) all sales and purchase of goods by the Producer Company;

(c) the instruments of liability executed by or on behalf of the Producer Company;

(d) the assets and liabilities of the Producer Company;

(e) in case of a Producer Company engaged in production, processing and manufacturing, the particulars relating to utilisation of materials or labour or other items of costs.

(2) The balance sheet and profit and loss accounts of the Producer Company shall be prepared, as far as may be, in accordance with the provisions contained in section 211.

Internal audit.

581ZF. Every Producer Company shall have internal audit of its accounts carried out, at such interval and in such manner as may be specified in articles, by a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Institute of Chartered Accountants Act, 1949.

38 of 1949.

Duties of auditor under this Part.

581ZG. Without prejudice to the provisions contained in section 227, the auditor shall report on the following additional matters relating to the Producer Company, namely:—

- (a) the amount of debts due along with particulars of bad debts if any;
- (b) the verification of cash balance and securities;
- (c) the details of assets and liabilities;
- (d) all transactions which appear to be contrary to the provisions of this Part;
- (e) the loans given by the Producer Company to the directors;
- (f) the donations or subscriptions given by the Producer Company;
- (g) any other matter as may be considered necessary by the auditor;

Donations or subscription by Producer Company.

581ZH. A Producer Company may, by special resolution, make donation or subscription to any institution or individual for the purposes of —

- (a) promoting the social and economic welfare of Producer Members or producers or general public; or
- (b) promoting the mutual assistance principles:

Provided that the aggregate amount of all such donation and subscription in any financial year shall not exceed three per cent. of the net profit of the Producer Company in the financial year immediately preceding the financial year in which the donation or subscription was made:

Provided further that no Producer Company shall make directly or indirectly to any political party or for any political purpose to any person any contribution or subscription or make available any facilities including personnel or material.

General and other reserves.

581ZI. (1) Every Producer Company shall maintain a general reserve in every financial year, in addition to any reserve maintained by it as may be specified in articles.

(2) In a case where the Producer Company does not have sufficient funds in any financial year for transfer to maintain the reserves as may be specified in articles, the contribution to the reserve shall be shared amongst the Members in proportion to their patronage in the business of that company in that year.

Issue of bonus shares.

581ZJ. Any Producer Company may, upon recommendation of the Board and passing of resolution in the general meeting, issue bonus shares by capitalisation of amounts from general reserves referred to in section 581ZI in proportion to the shares held by the Members on the date of the issue of such shares.

CHAPTER VII

LOANS TO MEMBERS AND INVESTMENTS

Loan, etc., to Members.

581ZK. The Board may, subject to the provisions made in articles, provide financial assistance to the Members of the Producer Company by way of—

- (a) credit facility, to any Member, in connection with the business of the Producer Company, for a period not exceeding six months;

(b) loans and advances, against security specified in articles to any Member, repayable within a period exceeding three months but not exceeding seven years from the date of disbursement of such loan or advances:

Provided that any loan or advance to any director or his relative shall be granted only after the approval by the Members in general meeting.

581ZL. (1) The general reserves of any Producer Company shall be invested to secure the highest returns available from approved securities, fixed deposits, units, bonds issued by the Government and co-operative or scheduled bank.

Investment in other companies, formation of subsidiaries, etc.

(2) Any Producer Company may, for promotion of its objectives acquire the shares of another Producer Company.

(3) Any Producer Company may subscribe to the share capital of, or enter into any agreement or other arrangement, whether by way of formation of its subsidiary company, joint venture or in any other manner with any body corporate, for the purpose of promoting the objects of the Producer Company by special resolution in this behalf.

(4) Any Producer Company, either by itself or together with its subsidiaries, may invest, by way of subscription, purchase or otherwise, shares in any other company, other than a Producer Company, specified under sub-section (2), or subscription of capital under sub-section (3), for an amount not exceeding thirty per cent. of the aggregate of its paid up capital and free reserves:

Provided that a Producer Company may, by special resolution passed in its general meeting and with prior approval of the Central Government, invest in excess of the limits specified in this section.

(5) All investments by a Producer Company may be made if such investments are consistent with the objects of the Producer Company.

(6) The Board of a Producer Company may, with the previous approval of Members by a special resolution, dispose of any of its investments referred to in sub-sections (3) and (4).

(7) Every Producer Company shall maintain a register containing particulars of all the investments, showing the names of the companies in which shares have been acquired, number and value of shares; the date of acquisition; and the manner and price at which any of the shares have been subsequently disposed of.

(8) The register referred to in sub-section (7) shall be kept at the registered office of the Producer Company and the same shall be open to inspection by any Member who may take extracts therefrom.

CHAPTER VIII

PENALTIES

581ZM. (1) If any person, other than a Producer Company registered under this Part, carries on business under any name which contains the words "Producer Company Limited", he shall be punishable with fine which may extend to ten thousand rupees for every day during which such name has been used by him.

Penalty for contravention.

(2) If a director or an officer of a Producer Company, who wilfully fails to furnish any information relating to the affairs of the Producer Company required by a Member or a person duly authorised in this behalf, he shall be liable to imprisonment for a term which may extend to six months and with fine equivalent to five per cent. of the turnover of that company during preceding financial year.

(3) If a director or officer of a Producer Company—

(a) makes a default in handing over the custody of books of account and other documents or property in his custody to the Producer Company of which he is a director or officer; or

(b) fails to convene annual general meeting or other general meetings,

he shall be punishable with fine which may extend to one lakh rupees, and in the case of a continuing default or failure, with an additional fine which may extend to ten thousand rupees for every day during which such default or failure continues.

CHAPTER IX

AMALGAMATION, MERGER OR DIVISION

Amalgamation, merger or division, etc., to form new Producer Companies.

581ZN. (1) A Producer Company may, by a resolution passed at its general meeting, —

(a) decide to transfer its assets and liabilities, in whole or in part, to any other Producer Company, which agrees to such transfer by a resolution passed at its general meeting, for any of the objects specified in section 581B;

(b) divide itself into two or more new Producer Companies.

(2) Any two or more Producer Companies may, by a resolution passed at any general or special meetings of its Members, decide to—

(a) amalgamate and form a new Producer Company; or

(b) merge one Producer Company (hereafter referred to as “merging company”) with another Producer Company (hereafter referred to as “merged company”).

(3) Every resolution of a Producer Company under this section shall be passed at its general meeting by a majority of total Members, with right of vote not less than two-thirds of its Members present and voting, whichever is less, and such resolution shall contain all particulars of the transfer of assets and liabilities, or division, amalgamation, or merger, as the case may be.

(4) Before passing a resolution under this section, the Producer Company shall give notice thereof in writing together with a copy of the proposed resolution to all the Members and creditors who may give their consent.

(5) Notwithstanding anything contained in articles or in any contract to the contrary, any Member, or any creditor not consenting to the resolution shall, during the period of one month of the date of service of the notice on him, have the option, —

(a) in the case of any such Member, to transfer his shares with the approval of the Board to any active Member thereby ceasing to continue as a Member of that company; or

(b) in the case of a creditor, to withdraw his deposit or loan or advance, as the case may be.

(6) Any Member or creditor, who does not exercise his option within the period specified in sub-section (5), shall be deemed to have consented to the resolution.

(7) A resolution passed by a Producer Company under this section shall not take effect until the expiry of one month or until the assent thereto of all the Members and creditors has been obtained, whichever is earlier.

(8) The resolution referred to in this section shall provide for—

(a) the regulation of conduct of the Producer Company's affairs in the future;

(b) the purchase of shares or interest of any Members of the Producer Company by other Members or by the Producer Company;

(c) in the case of purchase of shares of one Producer Company by another Producer Company, the consequent reduction of its share capital;

(d) termination, setting aside or modification of any agreement, howsoever arrived between the company on the one hand and the directors, secretaries and manager on the other hand, apart from such terms and conditions as may, in the opinion of the majority of shareholders, be just and equitable in the circumstances of the case;

(e) termination, setting aside or modification of any agreement between the Producer Company and any person not referred to in clause (d):

Provided that no such agreement shall be terminated, set aside or modified except after giving due notice to the party concerned:

Provided further that no such agreement shall be modified except after obtaining the consent of the party concerned;

(f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property, made or done by or against the Producer Company within three months before the date of passing of the resolution, which would if made or done against any individual, be deemed in his insolvency to be a fraudulent preference;

(g) the transfer to the merged company of the whole or any part of the undertaking, property or liability of the Producer Company;

(h) the allotment or appropriation by the merged company of any shares, debentures, policies, or other like interests in the merged company;

(i) the continuation by or against the merged company of any legal proceedings pending by or against any Producer Company;

(j) the dissolution, without winding up, of any Producer Company;

(k) the provision to be made for the Members or creditors who make dissent;

(l) the taxes if any, to be paid by the Producer Company;

(m) such incidental, consequential and supplemental matters as are necessary to secure that the division, amalgamation or merger shall be fully and effectively carried out.

(9) When a resolution passed by a Producer Company under this section takes effect, the resolution shall be a sufficient conveyance to vest the assets and liabilities in the transferee.

(10) The Producer Company shall make arrangements for meeting in full or otherwise satisfying all claims of the Members and the creditors who exercise the option, within the period specified in sub-section (4), not to continue as the Member or creditor, as the case may be.

(11) Where the whole of the assets and liabilities of a Producer Company are transferred to another Producer Company in accordance with the provisions of sub-section (9), or where there is merger under sub-section (2), the registration of the first mentioned Company or the merging company, as the case may be, shall stand cancelled and that Company shall be deemed to have been dissolved and shall cease to exist forthwith as a corporate body.

(12) Where two or more Producer Companies are amalgamated into a new Producer Company in accordance with the provisions of sub-section (2) and the Producer Company so formed is duly registered by the Registrar, the registration of each of the amalgamating companies shall stand cancelled forthwith on such registration and each of the Companies shall thereupon cease to exist as a corporate body.

(13) Where a Producer Company divides itself into two or more Producer Companies in accordance with the provisions of clause (b) of sub-section (1) and the new Producer Companies are registered in accordance with the provisions of sub-section (8), the registration of the erstwhile Producer Company shall stand cancelled forthwith and that Company shall be deemed to have been dissolved and cease to exist as a corporate body.

(14) The amalgamation, merger or division of companies under the forgoing sub-sections shall not in any manner whatsoever affect the pre-existing rights or obligations and any legal proceedings that might have been continued or commenced by or against any erstwhile company before the amalgamation, merger or division, may be continued or commenced by, or against, the concerned resulting company, or merged company, as the case may be.

(15) The Registrar shall strike off the names of every Producer Company deemed to have been dissolved under sub-sections (11) to (14).

(16) Any member or creditor or employee aggrieved by the transfer of assets, division, amalgamation or merger may, within thirty days of the passing of the resolution, prefer an appeal to the High Court.

(17) The High Court shall, after giving a reasonable opportunity to the person concerned, pass such orders thereon as it may deem fit.

(18) Where an appeal has been filed under sub-section (16), the transfer of assets, division, amalgamation or merger of the Producer Company shall be subject to the decision of the High Court.

CHAPTER X

RESOLUTION OF DISPUTES

Disputes.

581ZO. (1) Where any dispute relating to the formation, management or business of a Producer Company arises—

(a) amongst Members, former Members or persons claiming to be Members or nominees of deceased Members; or

(b) between a Member, former Member or a person claiming to be a Member, or nominee of deceased Member and the Producer Company, its Board of directors, office-bearers, or liquidator, past or present; or

(c) between the Producer Company or its Board, and any director, office-bearer or any former director, or the nominee, heir or legal representative of any deceased director of the Producer Company,

such dispute shall be settled by conciliation or by arbitration as provided under the Arbitration and Conciliation Act, 1996 as if the parties to the dispute have consented in writing for determination of such disputes by conciliation or by arbitration and the provisions of the said Act shall apply accordingly.

26 of 1996.

Explanation.—For the purposes of this section, a dispute shall include—

(a) a claim for any debt or other amount due;

(b) a claim by surety against the principal debtor, where the Producer Company has recovered from the surety amount in respect of any debtor or

other amount due to it from the principal debtor as a result of the default of the principal debtor whether such debt or amount due be admitted or not;

(c) a claim by Producer Company against a Member for failure to supply produce as required of him;

(d) a claim by a Member against the Producer Company for not taking goods supplied by him.

(2) If any question arises whether the dispute relates to formation, management or business of the Producer Company, the question shall be referred to the arbitrator, whose decision thereon shall be final.

CHAPTER XI

MISCELLANEOUS PROVISIONS

581ZP. (1) Where a Producer Company fails to commence business within one year of its registration or ceases to transact business with the Members or if the Registrar is satisfied, after making such inquiry as he thinks fit, that the Producer Company is no longer carrying on any of its objects specified in section 581B, he shall make an order striking off the name of the Producer Company, which shall thereupon cease to exist forthwith:

Strike off
name of
Producer
Company.

Provided that no such order cancelling the registration as aforesaid shall be passed until a notice to show cause has been given by the Registrar to the Producer Company with a copy to all its directors on the proposed action and reasonable opportunity to represent its case has been given.

(2) Where the Registrar has reasonable cause to believe that a Producer Company is not maintaining any of the mutual assistance principles specified, he shall strike its name off the register in accordance with the provisions contained in section 560 of this Act.

(3) Any Member of a Producer Company, who is aggrieved by an order made under sub-section (1), may appeal to the Company Law Board within sixty days of the order.

(4) Where an appeal is filed under sub-section (3), the order striking off the name shall not take effect until the appeal is disposed of.

581ZQ. The provisions of this Part shall have effect notwithstanding anything inconsistent therewith contained in this Act or any other law for the time being in force or any instrument having effect by virtue of any such law; but the provisions of any such Act or law or instrument in so far as the same are not varied by, or are inconsistent with, the provisions of this Part shall apply to the Producer Company.

Provisions of
this Part to
override other
laws.

581ZR. All the limitations, restrictions and provisions of this Act, other than those specified in this Part, applicable to a private company, shall, as far as may be, apply to a Producer Company, as if it is a private limited company under this Act in so far as they are not in conflict with the provisions of this Part.

Application
of provisions
relating to
private
companies.

CHAPTER XII

RECONVERSION OF PRODUCER COMPANY TO INTER-STATE CO-OPERATIVE SOCIETY

581ZS. (1) Any Producer Company, being an erstwhile inter-State co-operative society, formed and registered under this Part, may make an application—

Reconversion
of Producer
Company to
inter-State
co-operative
society.

(a) after passing a resolution in the general meeting by not less than two-third of its Members present and voting; or

(b) on request by its creditors representing three-fourth value of its total creditors,

to the High Court for its re-conversion to the inter-State co-operative society.

(2) The High Court shall, on the application made under sub-section (1), direct holding meeting of its Members or such creditors, as the case may be, to be conducted in such manner as it may direct.

(3) If a majority in number representing three-fourths in value of the creditors, or Members, as the case may be, present and voting in person at the meeting conducted in pursuance of the directions of the High Court under sub-section (2), agree for re-conversion, if sanctioned by the High Court, be binding on all the Members and all the creditors, as the case may be, and also on the company which is being converted:

Provided that no order sanctioning re-conversion shall be made by the Court unless the Court is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the Court, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251, and the like.

(4) An order made by the Court under sub-section (3) shall have no effect until a certified copy of the order has been filed with the Registrar.

(5) A copy of every such order shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(6) If default is made in complying with sub-section (4), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees, for each copy in respect of which default is made.

(7) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the company on such terms as the Court thinks fit, until the application is finally disposed of.

(8) Every Producer Company which has been sanctioned re-conversion by the High Court, shall make an application, under the Multi-State Co-operative Societies Act, 1984 or any other law for the time being in force for its registration as multi-State co-operative society or co-operative society, as the case may be, within six months of sanction by the High Court and file a report thereof to the High Court and the Registrar of companies and to the Registrar of the co-operative societies under which it has been registered as a multi-state co-operative society or co-operative society, as the case may be.

51 of 1984.

Power to
modify Act in
its application
to Producer
Companies.

581ZT. (1) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act (other than those contained in this Part) specified in the said notification—

(a) shall not apply to the Producer Companies or any class or category thereof; or

(b) shall apply to the Producer Companies or any class or category thereof with such exception or adaptation as may be specified in the notification.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.'

STATEMENT OF OBJECTS AND REASONS

During the last decade, changes have taken place in the Indian economy, in the communication and transportation infrastructures, as well as in the method of commerce, banking and international trade. Liberalization of the economy is in the process of changing the terms of trade between rural and urban, labour and industry, finance and commerce. Biotechnology, the information revolution, computerization can all be used to raise the standard of living of the rural masses and ultimately link this economic with regional, national and global demand. Institutions are needed to link the rural economy with the emerging new opportunities. Rural producers are at a potential disadvantage given their generally limited assets, resources, education and access to advanced technology. In the present competitive scenario, if cooperative enterprises are to continue to serve rural producers, they require an alternative to the institutional form presently available under Law.

2. Keeping all this in view Government constituted a Committee consisting of experts led by Dr. YK Alagh, Economist, former Union Minister to examine and make recommendations with regard to (a) framing a legislation which would enable incorporation of cooperatives as companies and conversion of existing cooperatives into companies and (b) ensuring that the proposed legislation accommodates the unique elements of cooperative businesses within a regulatory framework similar to that of companies. The Committee had a series of meeting during which it interacted with, and received responses from various cooperatives, institutes and individuals.

3. On the basis of the recommendations of the Committee the present Bill has been prepared with the main objective of facilitating formation of cooperative business as companies and to convert existing business into companies. The salient features of the Bill are:

(i) to offer a statutory and regulatory framework that creates the potential for producer-owned enterprises to compete with other enterprises on a competitive footing. The Companies Act envisages and provides for various forms of Companies including private limited, public limited, trusteeship companies and *nidhis*, each with specific and appropriate provisions applicable to them.

(ii) to provide for the formation and registration of producer companies which include the mutual assistance and co-operative principles within the more liberal regulatory framework afforded by the Company Law with suitable adaptations.

(iii) to provide an opportunity to cooperative institutions to voluntarily transform themselves into the new form of producer companies.

(iv) Under the Bill conversion of co-operatives to producer companies is purely voluntary.

(v) Member equity may not be publicly traded, but may only be transferred, with the approval of the producer company's Board of Directors. Producer companies would not be vulnerable to the takeover by multinationals or other companies.

(vi) The conversion option by co-operative society to producer company can be exercised only if two-thirds of the Members of the concerned society vote in favour of a resolution to that effect.

(vii) The new form of Company is designated as "producer company" to indicate that only certain categories of persons can participate in the ownership of such Companies. The members of the Producer Company have necessarily to be "primary producers", that is persons engaged in an activity connected with, or relatable to, primary produce.

(viii) The objects of a producer company have been defined to include, among other things, production, processing, manufacture and sale of primary produce as well as allied matters.

4. The Bill seeks to achieve the above objectives.

NEW DELHI,
The 29th August, 2001.

ARUN JAITLEY.

V

BILL No. 87 OF 2001

A Bill further to amend the Major Port Trusts Act, 1963.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. This Act may be called the Major Port Trusts (Amendment) Act, 2001.

Short title.

CHAPTER II

AMENDMENT TO THE MAJOR PORT TRUSTS ACT, 1963

38 of 1963.

2. After Chapter IX of the Major Port Trusts Act, 1963, the following Chapter shall be inserted, namely:—

Insertion of new Chapter IXA.

"CHAPTER IXA

TRANSFER OF PROPERTY AND CONTRACTS

111A. In this Chapter, unless the context otherwise requires,—

Definitions.

(a) "appointed date", in respect of a company, means such date as the Central Government may, by notification in the Official Gazette, appoint under section 111B for vesting of undertaking of a major port in such company;

(b) "company" means a company as defined in section 3 of the Companies Act, 1956.

1 of 1956.

Undertaking
of major port
to vest in
company.

111B. On such date as the Central Government may, by notification in the Official Gazette, appoint, the undertaking of a major port and the company to which it shall stand transferred and vested (here after in this Chapter referred to as the successor company) shall be specified in that notification for the said purpose.

Effect of
transfer of
undertaking
of major
ports.

111C. (1) On and from the appointed date, the Board of Trustees in relation to a major port specified in a notification issued under section 111B shall be dissolved and the entire capital of the Board of Trustees so dissolved shall, by virtue of this Chapter, stand vested in the successor company.

(2) The undertaking of the major port which is transferred to, and which vests in, a successor company under section 111B shall be deemed to include all assets, rights, powers, authorities and all properties (except the land and waterfront), movable or immovable, real and personal, corporeal and incorporeal, in possession or reservation, present or contingent of whatever nature and wheresoever situate including vehicles, cash, bank balances, deposits, foreign currencies, reserves, reserve funds or any other investments, securities, tenancies, leases and book debts and all other rights and interests arising out of such properties as were immediately before the appointed date in the ownership, possession or power of the Board of Trustees of such major port in relation to its undertaking, whether within or outside India, all books of account and registers, records and documents relating thereto and shall also be deemed to include all liabilities and obligations of whatever kind, within or outside India of such Board of Trustees in relation to the undertaking of such major port subsisting immediately before the appointed date.

(3) All contracts, deeds, bonds, guarantees, powers of attorney, other instruments and working arrangements subsisting immediately before the appointed date and affecting the Board of Trustees of the major port specified in the notification issued under section 111B in relation to such major port shall cease to have effect or to be enforceable against such Board of Trustees and shall be of as full force and effect against or in favour of the successor company and enforceable as fully and effectually as if, instead of such Board of Trustees, such company had been named therein or had been a party thereto.

(4) Any proceeding or cause of action pending or existing immediately before the appointed date by or against the Board of Trustees of the major port specified in the notification issued under section 111B in relation to such major port may, as from the appointed date, be continued and enforced by or against the successor company as it might have been enforced by or against such Board of Trustees, as if this Chapter had not been in force, and shall cease to be enforceable by or against the Board of Trustees.

(5) Every employee serving under the Board of Trustees of the major port specified in the notification issued under section 111B, solely or mainly for or in connection with the affairs of such major port immediately before the appointed date, shall become an employee of the successor company and shall hold his office or service therein by the same tenure and upon the same terms and conditions of service as he would have held the same if the Board had not been dissolved and shall continue to do so unless and until his employment in the successor company is terminated or until his tenure, remuneration or terms and conditions of service are duly altered by the successor company:

Provided that the tenure, remuneration and terms and conditions of service of any such employee shall not be altered to his disadvantage without the previous sanction of the Central Government.

111D. With effect from the appointed date, all licences, leases, permits, quotas and benefits, granted to the Board of Trustees of the major port specified in the notification issued under section 111B in connection with the affairs of such major port under any law for the time being in force, shall be deemed to have been granted to the successor company.

Licences, etc., to be deemed to have been granted to the company.

111E. On and from the appointed date, the ownership of the land and waterfront of the major port specified in the notification issued under section 111B shall vest in the Central Government.

Vesting of land and waterfront.

111F. (1) Where any assets of the Board of Trustees of a major port are transferred under this Chapter to a successor company, the successor company shall issue its shares to the Central Government of such amount as that Government may determine by notification in the Official Gazette.

Consideration for transfer.

(2) Where any share is issued to the Central Government or ownership of any land or waterfront is vested in it under this Chapter, the Central Government may, in its discretion, pay to the concerned successor company such amount as that Government deems fit.

111 G. Any guarantee given for or in favour of the Board of Trustees of a major port specified in the notification issued under section 111B with respect to any loan or lease, finance or other assistance relating to such major port shall continue to be operative in relation to the successor company.

Guarantee to be operative.

111H. (1) The Central Government may, subject to the terms and conditions of the agreement executed between that Government and the successor company, transfer on lease the land and waterfront of a major port, to the successor company, specified in the notification issued under section 111B.

Terms and conditions of leasing land and waterfront.

(2) The Central Government may permit, under the agreement executed under sub-section (1), the successor company to sub-lease the land or waterfront transferred on lease to it under that sub-section.

27 of 1957.
43 of 1961.

111-I. Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961 or any other enactment for the time being in force relating to the tax on transfer of property or capital gains, the successor company shall not be liable to pay wealth-tax, income-tax or any other tax in respect of transfer of any property or capital gains derived under this Act.¹

Exemption from transfer of wealth or capital gains, etc.

CHAPTER III

APPLICATION OF THE INDIAN PORTS ACT, 1908

38 of 1963.

3. Notwithstanding anything contained in the Major Port Trusts Act, 1963 or in any other law for the time being in force,—

Application of Act 15 of 1908.

(i) the rules made for the purposes specified in clauses (j), (jja) and (kk) of sub-section (1) of section 6 of the Indian Ports Act, 1908 (hereafter in this section referred to as the said Act) under that section; and

(ii) the provisions of sub-sections (1) and (3) of section 33, sections 34, 35, 46 and 47 of the said Act,

38 of 1963.

shall apply, to the major ports specified in the notification issued under section 111B of the Major Port Trusts Act, 1963, from the date appointed in that notification in the same manner as they apply to the ports within the meaning of clause (4) of section 3 of the said Act.

Power to
remove
difficulties.

4. (1) If any difficulty arises in giving effect to the provisions of this Act or the provisions of the Major Port Trusts Act, 1963 as amended by this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of the said Act as amended by this Act or this Act as may appear to be necessary or expedient for the purpose of removing the difficulty:

38 of 1963.

Provided that no order shall be made under this section after the expiry of two years from the date on which this Act comes into force.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

About 80 per cent of India's sea borne trade is conducted through the major ports in the country, which are administered by the Board of Trustees constituted under the Major Port Trusts Act, 1963.

2. Under the restricted ambit of Major Port Trusts Act, 1963, major ports are unable to operate in market-oriented situations and ensure flexibility of commercial operations. It is, therefore, necessary to change the work culture at the major ports through their structural reorganisation to provide the necessary independence of authority and decision-making; encourage private investment; execute projects speedily; and manage operations with professional finesse. The required structural reorganisation of major ports is sought to be achieved through their corporatisation.

3. To enable corporatisation of the existing major ports, the Major Port Trusts Act, 1963 needs to be amended to provide for vesting undertaking of the major ports in successor companies; define scope of transfer of assets and liabilities; protect the rights of successor companies in relation to the licences, etc., granted to the erstwhile Major Port Trusts, vest the land and waterfront in the Central Government, provide consideration for transfer of assets and liabilities; protect the guarantees enjoyed by the Port Trusts and lay down the terms and conditions of leasing the land and waterfront to the companies. Certain consequential amendments are required to the Indian Ports Act, 1908.

4. Salient features of the proposed Bill are as follows, namely:—

- (i) to authorise the Central Government to transfer the undertaking of any major port to its successor company and transfer the assets and liabilities of the Board of Trustees of a major port to such successor company and to define scope of the transfer. It is proposed that all assets and liabilities of the Board of Trustees, except land and waterfront shall be transferred to the successor company. The land and waterfront shall be vested in the Central Government, which will give the land on lease to the successor companies;
- (ii) to make enabling provision for allotment of shares by the successor company to the Central Government;
- (iii) to make enabling provision for making certain payment by the Central Government to the successor company in lieu of allotment of shares and vesting of land and waterfront;
- (iv) the licences, permits, quotas and benefits granted to the Board of Trustees shall be deemed to have been granted to the successor company;
- (v) any guarantee given for or in favour of the Board of Trustees shall continue to be operative in relation to the successor company;
- (vi) to grant exemption to the successor companies from payment of any transfer or capital gains tax; and
- (vii) to make certain provisions of the Indian Ports Act, 1908 applicable to the major ports.

5. To achieve aforesaid objectives, it is proposed to amend the Major Port Trusts Act, 1963 and the Indian Ports Act, 1908.

NEW DELHI;
The 29th August, 2001.

ARUN JAITLEY.

FINANCIAL MEMORANDUM

New section 111F proposed to be inserted by Clause 2 of the Bill provides for payment to the successor companies such amount as the Central Government may determine.

2. At this stage, it is not possible to give precise details of the expenditure to be incurred by the Government on such payments. In each case, the amount to be paid to the successor company will be determined in consultation with the concerned Departments of the Central Government and after approval by the Competent Authority such amounts would be paid.

3. The Bill, if enacted, is not likely to involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill empowers the Central Government by order to remove certain difficulties which may appear to it to be necessary or expedient. Further, such order shall not be made under this clause after the expiry of two years from the commencement of this Act. Every such order shall be laid before each House of Parliament.

2. The matters in respect of which the order may be issued are matters of administrative detail and procedure and, as such, the delegation of legislative power is of a normal character.

G. C. MALHOTRA,
Secretary-General.

